

# Adani Power (Mundra) Limited (APMUL)



## **BIDDING DOCUMENTS FOR SUPPLY OF STEAM COAL TO THERMAL POWER PLANTS OF Adani Power (Mundra) Limited (APMUL)**

**NOV 2019**

Tender Code	APMuL/19-20/CoalTender01 dated 29/11/2019
Mode	Physical + Reverse Auction
Tender Type	OPEN
Tender Category Type	SUPPLY OF STEAM COAL
Type Of Bid	TWO PART BID: Techno-Commercial BID + Price BID With reverse Auction
Material Description	Supply of Steam coal of Foreign Origin on CIF ( Cost, Insurance & Freight
Submission Date	24/12/2019
Tender Validity	90 Days from date of submission
Delivery Period	3 years
Tender Fees [In Rupees]	As provided in this ITB
Contact Email Id	<a href="mailto:Anal.chiniwala@adani.com">Anal.chiniwala@adani.com</a> <a href="mailto:Mrinalb.gautam@adani.com">Mrinalb.gautam@adani.com</a>
Commencement Period	30 days from 'Letter of award'
Basis Of Prices	As per Coal Supply Agreement
Deviation	No
BID OPENING DETAILS	
Techno-Commercial Bid	24/12/2019
Price bid Will be declared later	To be intimated to shortlisted bidders

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Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Notice Inviting Tender (NIT)

**SECTION A**

**NOTICE INVITING TENDERS**

**FOR**

**SUPPLY OF COAL OF FOREIGN ORIGIN**

**TO**

**MUNDRA POWER PLANT**

**(KUTCH DIST, GUJARAT STATE, INDIA)**

Tender Documents No. **APMuL/19-20/CoalTender01**

**Dated: 29/11/2019**

The Adani Power (Mundra) Limited (APMuL) invites sealed bids from eligible bidders for supply of Coal on CIF ( Cost, Insurance & Freight) basis delivery to Delivery Point of Mundra Thermal Power plant as detailed in Bidding Documents No. **APMuL/19-20/CoalTender01** dated **29/11/2019**.

#### **Brief overview of APMuL:**

Adani Power (Mundra) Limited (hereinafter referred to as "Buyer") has been incorporated under Companies Act, 1956 as a Generating Company.

Adani Power (Mundra) Limited has set up a 4620 MW (5 X 660 MW + 4 X 330 MW) capacity Mundra Power Project at Mundra in Kutch District, Gujarat State, India. Power Purchase Agreement has been signed with Electricity Supply Companies (ESCOMs) of state of Gujarat and Haryana.

#### **PROJECT INFORMATION:**

PROJECT NAME	:	Mundra Power Project
CAPACITY	:	4620 MW (5 X 660 MW + 4 X 330 MW)
OWNER	:	Adani Power (Mundra) Limited
POWER STATION LOCATION	:	Kutch District, Gujarat State, India

#### **1.0 SCOPE OF SUPPLY**

The scope of supply shall be valid for a period of two (02 years) on delivered basis. The delivered price will vary based on methodologies provided in Exhibits 3 and 5 of ITB which has to be indicated by the Bidder in price bid for supply of 2.5 Million (+/-25%) metric tonnes per annum (MMTPA) of Type 1 and 11 Million (+/-25%) metric tonnes per annum (MMTPA) of Type 2 of steam coal of foreign origin. General terms & conditions of the supply contract are included in the bidding document (Section C Draft Coal Supply Agreement).

#### **2.0 BID QUALIFICATION REQUIREMENTS**

The Bidder shall meet the qualifying requirements (QR) for Financial Capacity (Clause 2.1) and Technical Capacity (Clause 2.2). Bidder shall also note the stipulation of Clause 2.3 "Limitations" as specified herein below:

##### **2.1 QR for Financial Capacity:**

- a) **Net worth:** Bidder shall have Net worth of INR 5,00,00,000 (INR Five crores only) for every million tonne quoted for its Bid, or not less than 100% of its paid up share capital in the immediately preceding three (3)

financial years i.e., 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be, whichever is lower.

Net Worth for the relevant year shall mean the sum total of the paid up share capital and free reserves and surpluses (free reserves and surpluses shall mean all reserves credited out of the profits and share premium account but does not include reserves credited out of revaluation of assets) less miscellaneous expenditure that has not been written off.

- b) **Turnover:** Bidder shall have minimum average annual turnover of Rs. 35,00,00,000 (Rs. Thirty Five crores only) for every million tonne quoted for its Bid, in the immediately preceding three (3) financial years i.e., 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be, from the sale of thermal/ coking coal. Bidder shall provide Certificate(s) from its statutory auditors specifying the Turnover of the bidder for the immediately preceding three (3) financial years and also certifying that the Turnover (the "Turnover") means only the revenue earned from supply of thermal/coking coal.

## **2.2 QR for Technical Capacity:**

- a) Bids are acceptable for coal conforming to the Technical Specifications set forth in Clause 21.3 of ITB from established coal producers ("Miners") or coal trading companies ("Traders") for coal of any foreign origin. Bidder should have minimum experience of either import / export for minimum 2.0 MMTPA of non-coking steam coal/ coking coal, in any one year during preceding three financial years i.e. 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be.
- b) Bidder shall provide Certificate from its statutory auditors and the concerned clients certifying the contracts undertaken and successfully fulfilled during the immediate preceding three (3) Financial Years or Calendar Years, as the case may be.

## **2.3 Limitations**

- a) The Bids must clearly indicate the Bidder's name and address and other technical details such as coal quality including proximate and ultimate analysis details. Bidders are required to furnish the details of the past experience and enclose relevant documents like copies of authentic work order, completion certificates, agreements, profit & loss accounts and Balance Sheet for the financial years of immediately preceding three (3) financial years or Calendar Years, as the case may be, and certificate of quality of coal supplied in the past.
- b) Any Bid not containing sufficient descriptive materials to describe accurately the properties / characteristics, details as called for above may be treated as incomplete and non-responsive and hence likely to be rejected.

**3.0 Cost of tender document**

Tender purchase fees (nonrefundable) shall be paid by the bidders for an amount of Rs. 10,000 (Indian Rupees Ten Thousand Only) through a mode of Demand Draft in favour of Buyer payable at Ahmedabad or RTGS. The receipt issued by the Buyer shall be submitted in original at the time of physical bid submission.

**4.0 COST OF BIDDING**

The Bidder shall bear all costs associated with the preparation and submission of Bid, and APMuL will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

**5.0 SITE VISIT**

The Bidder and any of his personnel or agents are advised to visit and examine the Power Station and its surroundings including access to and from the Site, Infrastructure and other Facilities and obtain for himself on his own responsibility all information that may be necessary for preparing the Bid and entering into Agreement. Bidder himself will be responsible for any incidental or consequential damage or loss, and expenses incurred as a result of the Power Station visit.

**6.0 BID DOCUMENTS**

The bid documents can be downloaded from the website [www.adanipower.com](http://www.adanipower.com).

**7.0 EARNEST MONEY DEPOSIT AND BID SECURITY**

The Bids must be accompanied by earnest money deposit (EMD) and Bid security as per details given below.

**EARNEST MONEY DEPOSIT**

An earnest money deposit (EMD) of Rs. 10,00,000 (INR Ten Lacs Only) shall be deposited by the participating bidder one week prior to bid submission date. Buyer will in turn issue EMD receipt confirmation in the form of certificate immediately upon receipt of EMD payment and the said certificate needs to be submitted by the Bidder along with its bid.

This amount is non-refundable if the bidder withdraws the bid or submits the bid without bid security. The amount would be refunded to the non-successful bidders without interest after deducting the bank charges if any.

**BID SECURITY**

Bid Security for an amount of INR 1,50,00,000/- (INR One Crore and Fifty Lacs Only) in the form of Bank Guarantee. The Bid Security shall be valid for a period of 90 Days from the last date set for the submission of bid or such extended period till the finalization of the Bids occurs.

The bid security and EMD shall be refunded/ returned to the unsuccessful Bidders without interest immediately after the agreement is finalized. The bid

security and EMD shall be refunded/ returned to the successful Bidder on submission of the Contract Performance Guarantee acceptable to the Buyer, within 30 days of signing the agreement, as per details provided in Clause 4 of ITB.

## 8.0 SCHEDULE

Particulars	Date/Time
Date of publication of NIT:	28.11.2019
Downloading of bid documents:	On all days from 28.11.2019 to 22.12.2019.
Pre bid meeting:	This meeting will be held in Ahmedabad and shall start from 11:00 Hrs on 10.12.2019. Actual venue will be informed in advance on the website.
Bid submission:	24.12.2019, 11.00 Hrs IST
Date of opening of Techno Commercial bid:	24.12.2019, 15:00 Hrs IST
Date of opening of Price bid and Reverse Auction	Will be intimated to all responsive bidders.

## 9.0 GENERAL

- Submission of bid will not automatically mean that the Bidder is considered qualified.
- Incomplete bid will be summarily rejected.
- The requirements stated in the Bidding Documents are minimum, notwithstanding anything stated in this document. APMuL also reserves the right to assess the Bidder's capability and capacity to perform the Agreement should the circumstances warrant such an assessment in the overall interest of APMuL.
- APMuL reserves the right to accept or reject any Bid(s) or accept bid for and to annul the process of submission of Bids, at any time without assigning any reason thereof.
- All communication in respect of this Bid shall be posted on the Website. The communication can be addressed to:

**PROCUREMENT CELL (IMPORTED COAL)  
ADANI POWER (MUNDRA) LIMITED,  
1st FLOOR, SOUTH BLOCK,  
ADANI CORPORATE HOUSE,  
SHANTIGRAM, NEAR VAISHNODEVI CIRCLE,  
SG HIGHWAY, AHMEDABAD – 382421  
GUJARAT, INDIA**

**EMAIL ID'S:**

[ANAL.CHINIWALA@ADANI.COM](mailto:ANAL.CHINIWALA@ADANI.COM), [MRINALB.GAUTAM@ADANI.COM](mailto:MRINALB.GAUTAM@ADANI.COM)



**SECTION B**

**INSTRUCTIONS TO BIDDERS (ITB)**

**FOR**

**SUPPLY OF COAL OF FOREIGN ORIGIN**

**TO**

**MUNDRA POWER PLANT  
(KUTCH DIST, GUJARAT STATE, INDIA)**

Tender Documents No. **APMuL/19-20/CoalTender01**

**Dated: 29/11/2019**

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## **1. GENERAL INTRODUCTION**

### **1.1 PROJECT INFORMATION**

- 1.1.1 Adani Power (Mundra) Limited (hereinafter referred to as "Buyer") has been incorporated under Companies Act, 1956 as a Generating Company.
- 1.1.2 Adani Power (Mundra) Limited has set up a 4620 MW (5 X 660 MW + 4 X 330 MW) capacity Mundra Power Project at Mundra in Kutch District, Gujarat State, India. Power Purchase Agreement has been signed with Electricity Supply Companies (ESCOs) of state of Gujarat and Haryana.

### **1.2 POWER STATION LOCATION**

The Power Station is located in Kutch District of Gujarat in India, comprising of villages of Tunda and Siracha, and is about 60 KM from the city of Bhuj and 6 KM from Mundra Port. It is flanked by conveyor belt system for delivery of the coal from the port which is approximately 6 KM in length.

### **1.3 DISCHARGE PORT**

The Power Station is located at a distance of 6 KM from West Basin Port of Adani Port and Special Economic Zone Limited (APSEZ) (hereafter referred as Discharge Port), which is a major all-weather port in India. The port has 3 berths for handling general cargo and iron ore with dedicated berth to APMuL to handle coal for the Power Station. This West Basin Port of APSEZ is located at position Lat 22° 44'. 10 ° N, Long 69° 33'. 55 ° 60' E. The approach channel in the port is 16.5 m below chart datum respectively and is capable of handling Cape-size Vessels / Ships with draft 17.3 meters and maximum displacement of upto 266000 MT.

## **2. INVITATION OF BID**

- 2.1. The Power Station is capable of firing steam coal with a gross calorific value (as received basis) of 4200 Kcal/Kg - 5700 kcal/kg as per coal characteristics mentioned in Exhibit 1. of ITB.
- 2.2. The Buyer intends to purchase 2.5 Million (+/-25%) Metric Tonnes per Annum (MMTPA) of Type 1 and 11 Million (+/-25%) Metric Tonnes Per Annum (MMTPA) of Type 2 of steam coal of any foreign origin, as per Exhibit 1, under one or more long term agreement(s) for agreement period of two (02) years, mutually extendable by one (01) year, as per the provisions of draft CSA.
- 2.3. The Buyer now invites bids for long term supply of steam coal on CIF ( Cost, Insurance & Freight) basis at Discharge Port from suppliers (hereinafter referred as "Bidders") who are in a position to supply the steam coal, as per the General Specifications (Exhibit 1) & Guaranteed Specification (Clause 21.3) on a sustainable basis and who are capable to supply quantity of not less than 2.5 MMTPA of Type 1 Coal and/ or 2.0 MMTPA of Type 2 coal as per price basis

provided in Exhibit 5. However, the Bidder may quote to supply a total of 2.5 MMTPA of Type 1 Coal and 11.0 MMTPA of Type 2 Coal, subject to the bidding instructions of this ITB. The Coal Supply Agreement shall be on the basis of Coal delivered at Delivery Point (i.e. on CIF (Cost, Insurance & Freight) basis). General terms and conditions of the coal supply agreement shall be as given in Section C - Draft Coal Supply Agreement.

- 2.4. The Buyer intends to purchase Coal from the Bidder as per terms and conditions of the Draft Coal Supply Agreement.
- 2.5. The tender document may be purchased as per Clause 3.0 of NIT
- 2.6. The Bid shall be prepared in two parts and submitted in Physical form as detailed in Clause 17 of this ITB. Following to such submission, the technically qualified bidders, selected through evaluation of Technical Bid and Price Bid, subject to provisions of Clause 20 and 21, shall be called for online bidding ("Reverse Auction"). Detailed methodology for such Reverse Auction is provided in Exhibit 10 of this ITB.
- 2.7. Physical Bids shall be opened as set out in Clauses 18 of this ITB in the presence of Bidders who wish to attend at the office of the Buyer.

### **3. GENERAL INSTRUCTIONS**

- 3.1. The bidders shall submit Bids in respect of the supply of Coal as set forth in the accompanying General Specifications & Guaranteed Specification. Bids shall be prepared and submitted in accordance with the instructions contained in this ITB.
- 3.2. Bids offering to supply quality of Coal outside the General specification as set out in Exhibit 1. of ITB are liable to be rejected.
- 3.3. The Buyer may at its discretion extend the deadline for the submission of Bids by amending the Bidding Documents in which case all rights and obligations of the Buyer and Bidders previously subject to the deadline shall thereafter be subjected to the deadline as extended.
- 3.4. Before bidding, the Bidder shall make independent enquiry and satisfy himself as to all the required information, inputs, conditions, circumstances and factors which may have an effect on his price bid and also on the execution of Agreement covered under these Bidding Documents.
- 3.5. The Bidders shall be responsible to get fully acquainted with the laws, rules, tax regulations including Income Tax, Reserve Bank of India's regulations etc., prevalent in India which may affect the execution of Agreement covered under these Bidding Documents.
- 3.6. Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Buyer shall in no case be responsible or liable for these costs.

#### 4. EARNEST MONEY DEPOSIT, BID SECURITY AND CONTRACT PERFORMANCE GUARANTEE

- 4.1. An earnest money deposit (EMD) of Rs. 10,00,000 (INR Ten Lacs Only) shall be deposited by the participating bidder one week prior to bid submission date in the following account of the Buyer:

A/c No: **37537685037**  
A/c TYPE: **Current A/c**  
BANK: **State Bank of India**  
BRANCH: **CCG. Branch, Navrangpura, Ahmedabad**  
IFSC CODE: **SBIN0004152**  
SWIFT CODE: **SBININBB219**

Buyer will in turn issue EMD receipt confirmation in the form of certificate immediately upon receipt of EMD payment and the said certificate needs to be submitted by the Bidder along with its bid.

This amount is non-refundable if the bidder withdraws the bid or submits the bid without bid security. The amount would be refunded to the non-successful bidders without interest after deducting the bank charges if any.

- 4.2. Bid security of Rs. 1,50,00,000 (INR One Crore and Fifty Lacs Only) shall be submitted by the Bidder in the form of Bank Guarantee (BG) issued or confirmed by a Scheduled Bank in India, in format acceptable to the Buyer. (Draft of BG is enclosed herewith as Exhibit 7. of ITB). This BG will be encashed if the Bidder withdraws the bid. The BG would be refunded to the non-successful bidders.

The bid security shall be valid for a period of 90 days or such extended period till the finalization of Bids occur.

The bid security and EMD shall be refunded/ returned to the unsuccessful Bidders without interest immediately after the agreement is finalized. The bid security and EMD shall be refunded/ returned to the successful Bidder on submission of the Contract Performance Guarantee acceptable to the Buyer, within 30 days of signing the agreement.

- 4.3. Contract Performance Guarantee ("CPG") for full quantity of Type 1 and Type 2 Coal shall be INR 50,00,00,000 (Indian Rupees Fifty Crores only). The successful Bidder(s) shall submit value pro-rated for such amount of CPG, for quantity quoted by the Bidder(s), correct to the nearest integer number, in the form of bank guarantee issued or confirmed by a Scheduled Bank in India, in favour of Adani Power (Mundra) Limited, in the format enclosed with the Bidding Documents (Exhibit 8. of ITB), to be submitted by the successful

Bidder(s) after detailed evaluation for 'Most Favourable Bid'. In case the successful Bidder(s) fails to submit this CPG within 30 (thirty) days of issue of letter of award ('LoA'), EMD and bid security shall be forfeited for the Bidder.

## **5. SCOPE OF SUPPLY**

- 5.1. The brief Scope of work includes supply of Steam Coal to Delivery Point of APMuL, as per schedule specified by APMuL. Scope of Work to include all activities related to Sourcing, Shipping, Import and supply of required quality and quantity of coal, including but not limited to arranging of Coal, Vessel, Ocean Freight, and Marine Insurance. The Bidder shall be responsible for all cost incurred till the discharge of coal at Delivery Point (i.e. on CIF (Cost, Insurance & Freight)). The successful bidder shall not hold APMuL responsible for berthing delays under any circumstances.
- 5.2. All activities related to coordination with load port agencies, vessel agents, handling agents, statutory authorities etc. which is required to deliver the coal upto Delivery Point of APMuL are to be carried out by the Bidder without any financial / commercial implication on the APMuL.
- 5.3. The Bidder should obtain all necessary and related statutory clearances applicable for supply of imported coal against this Invitation to Bid from the concerned authorities.

### **5.4. DELIVERY POINT:**

The Delivery Point for Coal will be upto the West Basin Port of Adani Port and Special Economic Zone Limited (APSEZ) (hereafter referred as Discharge Port). The Bidder will intimate APMuL representatives in advance regarding likely delivery period. Weighment of coal will be carried out at the Discharge Port.

## **6. TOTAL REQUIREMENT**

The total requirement of APMuL for "Type 1" Coal is 2.5 MMTPA and "Type 2" Coal is 11 MMTPA. A Bidder can submit Bid for either full quantity of Type 1 Coal and/ or minimum 2 MMTPA of Type 2 Coal. APMuL reserves the right to cancel/withdraw this Invitation for Bids without assigning any reason for such decision. Further APMuL also reserves right to award agreement for a quantity lower than the quantity offered by the Bidder on the same terms and conditions.

The scope of supply shall be on delivered basis (i.e. on CIF (Cost, Insurance & Freight) basis). The delivered price shall be varied based on methodologies provided in Exhibit 5. of ITB, which has to be indicated by the Bidder as per quality provided in Exhibit 1. General terms & conditions of the supply agreement are included in the section C of the bidding document (Draft Coal Supply Agreement).

## 7. PRICE BASIS, CURRENCIES AND PAYMENTS

- 7.1. The Price shall be quoted to meet the requirement stipulated in the terms and conditions of the Draft Coal Supply Agreement.
- 7.2. **BID Currency**  
Prices shall be quoted in US Dollars in accordance to Exhibit 5 of this ITB.
- 7.3. **Invoicing and Payment terms**  
The detailed invoicing and payment terms shall be as stipulated in Clause 11 - BILLING AND PAYMENT of Draft Coal Supply Agreement.

## 8. QUALIFICATION REQUIREMENT(QR)

Bidder shall meet the qualifying requirements stipulated hereunder as per Clauses 8.1 and 8.2;

### 8.1. QR FOR FINANCIAL CAPACITY:

**a) Net worth:** Bidder shall have Net worth of INR 5,00,00,000 (INR Five crores only) for every million tonne quoted for its Bid, or not less than 100% of its paid up share capital in the immediately preceding three (3) financial years i.e., 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be, whichever is lower.

Net Worth for the relevant year shall mean the sum total of the paid up share capital and free reserves and surpluses (free reserves and surpluses shall mean all reserves credited out of the profits and share premium account but does not include reserves credited out of revaluation of assets) less miscellaneous expenditure that has not been written off.

**b) Turnover:** Bidder shall have minimum average annual turnover of Rs. 35,00,00,000 (Rs. Thirty Five crores only) for every million tonne quoted for its Bid, in the immediately preceding three (3) financial years i.e., 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be, from the sale of thermal/ coking coal. Bidder shall provide Certificate(s) from its statutory auditors specifying the Turnover of the bidder for the immediately preceding three (3) financial years and also certifying that the Turnover (the "Turnover") means only the revenue earned from supply of thermal/coking coal at site/port of delivery.

### 8.2. QR FOR TECHNICAL CAPACITY:

- a) Bids are acceptable for coal conforming to the Technical Specifications set forth in Clause 21.4 of ITB from established coal producers ("Miners") or coal trading companies ("Traders") for coal of any foreign origin. Bidder should have minimum experience of either import / export for minimum 2.0 MMTPA of non-coking steam coal/ coking coal, in any one year during preceding three

financial years i.e. 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be.

- b) Bidder shall provide Certificate from its statutory auditors and the concerned clients certifying the contracts undertaken and successfully fulfilled during the immediate preceding three (3) Financial Years or Calendar Years, as the case may be.

## **9. DOCUMENTS FOR QUALIFICATION TO BE FURNISHED**

- 9.1. The Bids must clearly indicate the Bidder's name and address, the technical details of coal. Bidders are required to furnish the details of the past experience and enclose relevant documents like copies of authentic work order, completion certificates, agreements, profit & loss accounts and Balance Sheet for the immediately preceding three (3) financial years, viz., 2016-17, 2017-18 and 2018-19, or Calendar Years 2016, 2017 and 2018, as the case may be, certified by its statutory auditors.
- 9.2. Any Bid not containing sufficient descriptive materials to describe accurately the properties / characteristics, details as called for in the various schedules and data sheet etc. stipulated in the Bidding Documents, may be treated as incomplete and non-responsive and hence run risk of rejection.

## **10. BIDDING DOCUMENTS**

- 10.1. The specification of coal required, bidding procedures and provisions of agreements are presented in the Bidding Documents which consist of the following and shall form an integral part of Bidding Documents and shall cover entire scope of Draft Coal Supply Agreement.

### **PART-I**

- INSTRUCTION TO BIDDERS (ITB) INCLUDING NIT
- GENERAL SPECIFICATION OF COAL (Exhibit 1. of ITB)
- BID FORM (Exhibit 2. of ITB)
- PRICE ADJUSTMENT DUE TO QUALITY VARIATION (Exhibit 3. of ITB)
- INSPECTION DURING THE COURSE OF SUPPLY (Exhibit 4. of ITB)
- PRICE SCHEDULE (Exhibit 5. of ITB)
- DATA SHEET TO BE FURNISHED BY THE BIDDER (Exhibit 6. of ITB)
- CERTIFICATE ISSUED BY BUYER FOR EMD DEPOSITED, AS AGAINST CLAUSE 4.1.
- PROFORMA OF BANK GUARANTEE FOR BID SECURITY (Exhibit 7. of ITB)
- PROFORMA OF BANK GUARANTEE FOR COAL SUPPLY AGREEMENT (Exhibit 8. of ITB)
- FORMAT FOR POWER OF ATTORNEY FOR NOTARISING (Exhibit 9. of ITB)

### **PART-II**

- TERMS OF THE DRAFT COAL SUPPLY AGREEMENT



- 10.2. The Bidder is expected to examine all instructions, forms, terms and specifications in the Bidding Documents. Failure to furnish all information required in the Bidding Documents or submission of a Bid not substantially responsive to the Bidding Documents in every respect may result in likely rejection of the Bid. However the Buyer's decision in regard to the responsiveness and rejection of Bids shall be final and binding.

## 11. CLARIFICATION OF BIDDING DOCUMENTS

- 11.1. A prospective Bidder is required to carefully examine the Bidding Documents and fully inform himself as to all the conditions and matters which may in any way affect the "supply" or cost hereof. If any Bidder finds discrepancies or omissions in the specifications and documents or is in doubt as to its true meaning or requires any clarification / additional information on the Bidding Documents, may seek such clarifications in writing 2 days prior to Pre-bid meeting as per this ITB.

Buyer will respond in writing to any clarification on the Bidding Documents that it receives no later than two days prior to the pre bid meeting prescribed by the Buyer. The Buyer's response (including an explanation of the query but not identification of its source) after Pre Bid meeting will be furnished as addendum. All clarification / interpretation of the Buyer shall form part of the Bidding Documents.

**Clarification sought if any after the PRE-BID meeting shall not be entertained.**

## 12. AMENDMENT OF BIDDING DOCUMENTS

- 12.1. At any time prior to the deadline for submission of Bids, the Buyer may, for any reason, whether at its own initiative, or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by amendment.
- 12.2. The amendment will be notified through an email to all bidders who have purchased the BID Documents and the same will be binding on the bidders. Bidders are required to regularly keep themselves updated with regard to any clarification or amendment communicated by APMuL and it will be assumed that the information contained therein has been taken into account by the Bidders in their Bid.
- 12.3. In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their Bid, the Buyer at his sole discretion may extend the deadline for the submission of Bids.

### 13. LANGUAGE OF BID

- 13.1. The Bid prepared by the Bidder and all correspondence and documents relating to the Bid shall be written in the English Language. Any printed literature furnished by the Bidder may be in other language, provided that this literature is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall govern.

### 14. DOCUMENTS COMPRISING THE BID

The Bidder shall prepare the Bid in two parts and each part shall comprise of following documents,

#### **Part A**

**(Hereafter referred as TECHNO-COMMERCIAL BID)**

The Part A of the Bid shall consist of following:

- a) Bid Form (Exhibit 2. as stated in Clause 9.1) completed and signed by the Bidder.
- b) Data Sheet in the format (enclosed at Exhibit 6. as stated in Clause 9.1) duly completed and signed by the Bidder.
- c) Attachments as below:
  - (i) Attachment 1 - Original receipt issued by APMuL for Tender Purchase Fees
  - (ii) Attachment 2 - EMD certificate
  - (iii) Attachment 3 - Original BG for bid security as per Exhibit 7.
  - (iii) Attachment 4 - Original Power of Attorney as per Exhibit 9. duly authorized by a Notary Public, indicating that the person(s) signing the Bid have the authority to sign the Bid and thus the Bid is binding upon the Bidder during the full period of its validity in accordance with Clause 15 of ITB along with copy of Board Resolution
  - (iv) Attachment 5 - Bidder's Eligibility and Qualifications

The documentary evidence of the Bidder's capacity and capability to perform the Agreement if its Bid is accepted, shall establish to the Buyer's satisfaction that the Bidder has the Supplying, financial, technical, and other capabilities necessary to perform the Agreement

#### **Part B**

**(Hereafter referred as Price Bid)**

Part B of the Bid shall consist of the following

- a) Price Schedule in the format (enclosed at Exhibit 5. of this ITB) duly filled in and signed by the Bidder.

## **15. VALIDITY OF BID**

- 15.1. The Bid shall be kept valid for acceptance for a period of 90 days from the last date set for submission of Bid or such extended date as may be notified through an email to all bidders.
- 15.2. In the event of any requirement for extension of validity of Bid sought by the Buyer, the validity of the Bid shall be suitably extended by the Bidder in which event the validity period of the Bid Security if submitted in the form of Bank Guarantee shall also be appropriately extended.

## **16. SIGNATURE OF BID**

- 16.1. The person or persons making the bid should be duly authorized. The authorized person / persons should sign and stamp the bid and details like name, residence & place of business etc., of the authorized person should be indicated. The names of all persons signing should also be typed or printed below the signature. All pages of the document should be serial numbered.
- 16.2. Bid by a partnership firm should be in the firm's name and must be accompanied with the Partnership Deed followed by the signature, authorization by other / all partners in favour of the signatory and designation of the authorized partner.
- 16.3. Bid by a company must be signed with the legal name of the company by the President or Managing Director or other person or persons authorized to bid on behalf of such Company. Satisfactory evidence of authority of the person signing on behalf of the Bidder shall be furnished with the Bid.
- 16.4. All pages of Bid, except for un-amended literature, shall be initialed by the person or persons signing the Bid. The Bid shall normally contain no interlineations, erasures or over writing except as necessary to correct errors made by Bidder, in which case such corrections shall be duly attested by the person signing the Bid.

## **17. SUBMISSION OF BID**

- 17.1. All physically submitted Bids shall be typewritten or printed with indelible ink. The Bid and the documents attached thereto shall be considered as forming a part of the Agreement documents, however, always subject to the acceptance by the Buyer.
- 17.2. The Bids prepared in two parts as explained at Clauses 10 and 14 shall be submitted in Physical form.

- 17.3. Physical bids shall be submitted by the bidders in main envelope containing below inner envelopes
- a) Envelope A: (i) Receipt for Purchase of BID document (ii) EMD Certificate of Rs 10,00,000 (INR Ten Lakhs Only) (iii) BG for Bid security of Rs. 1,50,00,000 (INR One Crore and Fifty Lacs Only) (All in original)
  - b) Envelope B: Power of Attorney & BR
  - c) Envelope C: All other documents (except Price Bid) required for Technical Bid as above
  - d) Envelope D: Price Bid.
- 17.4. The Buyer reserves the right to reject any bid which is not deposited according to instructions stipulated above.
- 17.5. Bidders are advised to submit all the documents duly signed by authorized persons along with company's stamp.
- 17.6. Bidder cannot modify or withdraw the bid after the bid submission.
- 17.7. Corrigendum /modification/corrections issued by the Buyer shall be communicated by mail and shall become integral part of tender documents. For any clarification required, bidder can contact below officials:
- 1) Mr. Anal Chiniwala,  
Mob. : +91-9099938954  
Email: Anal.Chiniwala@adani.com
  - 2) Mr. Mrinal Gautam  
Mob. : +91-9426602447  
Email: mrinalb.gautam@adani.com

## **18. BID OPENING**

- 18.1. The Buyer shall open the Bids as per below sequence
- a) Envelope A shall be opened first. If all documents in order and acceptable to Buyer then;
  - b) Envelope B shall be opened for the Bidders whose documents of Envelope A is in order.
  - c) Envelope C shall be opened for the Bidders whose documents of Envelope A & B are in order.
  - d) After verification of documents in Envelope C, a time and date for opening of Price Bid (Envelope D) shall be communicated to only those bidders whose bids are responsive as per NIT/ ITB and other terms of tender to the fullest satisfaction of Buyer.
  - e) On the date and time as communicated by Buyer, envelope D shall be opened and L1 prices shall be discovered.

Note: Buyer may allow bidders' representatives (Max 2) who wish to attend bid opening process at the office of the Buyer at the following address at the sole discretion of Buyer:

**ADANI POWER (MUNDRA) LIMITED,  
1st FLOOR, SOUTH BLOCK,  
ADANI CORPORATE HOUSE,  
SHANTIGRAM, NEAR VAISHNODEVI CIRCLE,  
SG HIGHWAY, AHMEDABAD – 382421  
GUJARAT, INDIA**

Email: [Anal.Chiniwala@adani.com](mailto:Anal.Chiniwala@adani.com), [mrinalb.gautam@adani.com](mailto:mrinalb.gautam@adani.com)

## **19. TECHNO COMMERCIAL EVALUATIONS OF BIDS**

- 19.1. The Buyer shall examine the Techno-Commercial Bids (Documents received through Envelope A, B & C of Bids) to determine whether they are complete in all respects including submission of data called for and compliance to the requirements of the Bidding Documents, whether the required Tender Fees, EMD & Bid Security has been furnished, and whether all documents have been properly signed and stamped etc. The Buyer may at its discretion reject the Bid(s) which have discrepancy, found incomplete, not submitted according to the instructions contained in the ITB.
- 19.2. The Buyer shall thereafter carry out Techno Commercial evaluation of the Bids. Further the Buyer shall examine the capacity and capability of the Bidder for supply of the offered quantity and quality of Coal based on the details submitted by Bidder. The Buyer shall also examine the terms and conditions offered in the Bid with reference to the provisions in the Bidding Documents. In the course of such Techno Commercial evaluation of Bids and to assist in the examination, evaluation and comparison of Bids, the Buyer may at its discretion ask the Bidder for any clarification of its Bid. The bidder's response to the clarification sought shall be received in writing through an email / letter. The Buyer shall accordingly determine the responsiveness of each Bid to the Bidding Documents. A responsive Bid is one which conforms to all the terms and conditions of the Bidding Documents without material deviation and that Bidder has been assessed to have offered Coal meeting the requirements of the specifications and to have the capability of supplying Coal on long term basis.

## **20. OPENING OF PRICE BID AND REVERSE AUCTION**

The Price Bids (Envelope D) of those considered responsive as determined in accordance with Clause 19 above shall be opened by the Buyer on a date intimated in advance to all such responsive Bidders.

**Bid for Type 1 and Type 2 Coal shall be evaluated separately in following similar manner:**

- a. The bid with the lowest delivered price of coal as per Price Schedule Form (Exhibit 5) as on base date (i.e., Bid Due Date.) shall be considered as L-1 bidder. The bid with next higher values shall be considered as L-2, L-3, L-4 and so on. Out of these qualified bidders based on rankings 50% of total qualified bidders subject to minimum of 4 bidders shall be invited for Reverse Auction.
- b. The Buyer, based on evaluation of Price Bids, shall appoint the responsive Bidders to participate in Reverse Auction stage. An online platform, procuretiger.com, shall be used for Reverse Auction, with initial price being the lowest price for each type of coal identified through Price Bid opening (Envelope D). Details of such online bidding is provided in Exhibit 10 of this ITB.
- c. Buyer, at its own discretion, will conduct Reverse Auction for both Type 1 and Type 2 Coal separately and accordingly, arrive at the Successful Bidder from the process.
- d. The Most Favorable Bid post completion of Reverse Auction shall be evaluated as per Clause 21.4.

**21. EVALUATIONS AND COMPARISON OF PRICE BIDS**

- 21.1. Bid for Type 1 and Type 2 Coal shall be evaluated separately in following similar manner as per Clauses 21.2, 21.3 and 21.5.
- 21.2. The Price Bids of responsive Bids thus opened will also be evaluated by the Buyer to ascertain the 'Most Favorable Bids' which shall be the most advantageous Bid(s). For the purpose of such comparison and evaluation, arithmetical errors will be corrected as per Clause 21.3. Such evaluation shall also take into account the requirement of the Buyer for sourcing of Coal with load port / country diversity for ensuring un-interrupted supply of Coal for the Power Station.
- 21.3. For rectifying Arithmetical errors in Price Bid and/ or price identified for Successful Bidder, in case of any discrepancy in the unit price and the total price that is obtained by multiplying the unit price and the quantity, the unit price shall prevail and the total price will be corrected. If there is a discrepancy between the total bid amount and the sum of total prices, the sum of total prices shall prevail and the total bid amount will be corrected.

**21.4. PARAMETER FOR PRICE BASIS**

The coal to be imported will be as per specifications furnished in Exhibit 1. The coal delivered beyond the General Specification of the technical parameters as per the specifications provided in Exhibit 1. shall be liable for rejection by APMuL. Base Price quoted by Bidders in price schedule as at Exhibit 5. shall be for the following specification ("Guaranteed Specification").

PARAMETER	Type 1 Coal	Type 2 Coal
a. Gross Calorific Value (ARB)	5400 Kcal/ Kg	4500 Kcal/ Kg
b. Ash Content (ARB)	8%	4%
c. Total Moisture Content (ARB)	23%	29%
d. Sulphur Content (ARB)	0.6%	0.3%
e. Fines (Less Than 0.2 mm)	Up to 50mm with fines (up to 2mm) less than 20%	Up to 50mm with fines (up to 2mm) less than 20%

The Bidder may provide coal of any foreign origin which they deem fit and in accordance to the General Specification, and shall have to ensure that the parameters are within the acceptable range as per Exhibit 1.

#### 21.5. EVALUATION CRITERIA

21.5.1 The Evaluation Criteria is based on the need to identify and rate the most advantageous Bid(s) to the Buyer. Accordingly the Buyer intends not only to evaluate the costs, but also the reliability and capability of Bidder etc.

21.5.2 The Bids will be evaluated based on the delivered price using the following parameters quoted by the bidder:

- Quoted FOB Price
- Quoted Ocean Freight and Marine Insurance
- Quoted Other Charges will be sum of Sampling & Analysis charges (at Load Port), Custom Clearance and Freight Forwarding Agency Charges and other Incidental Charges at Loading Point.

21.5.3 The Base Price as per Price Schedule (Exhibit 5. ) shall be evaluated for each Bidder for both Type 1 and Type 2 coal, arrived based on Reverse Auction.

21.5.4 The order for the Type 1 Coal shall be placed to L-1 bidder based on Reverse Auction price obtained, separately conducted for Type 1 Coal, as notified by APMuL.

21.5.5 The order for the Type 2 Coal, for the quoted quantity by the Bidder, shall be placed to L-1 bidder based on Reverse Auction price obtained. Subsequently, the order for the remaining quantities, if any, shall be placed based on the prices discovered through Reverse Auction for Type 2 Coal. In case of any

quantity left from the quantities allocated to L-1 and L-2 Bidders, such order shall be placed to the single Bidder that matches the L-2 price for Type 2 Coal arrived after Reverse Auction process for Type 2 Coal, subject to meeting the qualification criteria as stipulated in Clause 8.

Example for Type 2 Coal:

Quantity Offered by Bidder	Bidder	Price (From Reverse Auction)
4	A	90 USD/ Tonne
5	B	110 USD/ Tonne
6	C	105 USD/ Tonne
11	D	115 USD/ Tonne

In the above case, order for 4 MMTPA shall be placed to Bidder A, order for 6 MMTPA shall be placed to Bidder C and order for the balance quantity of 1 MMTPA shall be placed to Bidder B at USD 105.

21.5.6 For avoidance of any doubt, Buyer may place the order for entire quantity of 11 MMTPA of Type 2 Coal to single Bidder, in case its price is the lowest based on the respective Reverse Auction processes. In case of above example in Clause 21.5.5, Bidder A may be offered and awarded the entire quantity of Type 2, if Bidder A agrees to increase quantity subject to his Technical eligibility as per Clause 8.2 and Financial eligibility as per Clause 8.1. In cases no bids are received in the reverse auction process, Buyer at its own discretion may place the order on the basis of Physical Price Bids.

21.5.7 It shall be noted that in case the total quantity quoted by the Bidder(s) for Type 2 Coal is less than 11 MMTPA, then Buyer may, at its own discretion, annul the bidding process for Type 2 Coal. Further, the bidding process for Type 2 Coal shall also be annulled in case the maximum number of successful Bidder, arrived basis the Reverse Auction process for Type 2 Coal exceeds in number by three (03) Bidders, for supply of entire quantity of 11 MMTPA of Type 2 Coal.

21.5.8 In case, if no bids are received during the reverse auction, the buyer shall have its own discretion to award the contract/ issue LOI on the basis of Physical Price Bids.

## 22. BUYER'S DECISION ON AWARD OF AGREEMENT

Pursuant to the evaluation of Bids as detailed in Clause 21, the Buyer shall consider award of Agreement to one or more Bidders ("Supplier") for quantity



as above and issue Letter of Award (LoA) to the Bidder as per Clauses 21.4 and 21.5.

### **23. BUYER'S RIGHT**

The submission of any Bid under these Bidding Documents shall also contain an absolute declaration that the Bidder shall have no cause of action, against the Buyer for rejection of Bids. The Buyer reserves the absolute right to accept or reject any Bid and modify or annul the bidding process and reject all Bids at any time prior to award of the agreement without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Buyer's action.

The Bid as received by the Buyer from any Bidder in response to these Bidding Documents shall be retained by the Buyer and under no circumstances the same shall be returned by the Buyer.

### **24. FORCE MAJEURE**

#### **Definition of Force Majeure**

Any act, event or circumstance or combination of act, events or circumstances:

- 26.1 which is not within the reasonable control of the Affected Party;
- 26.2 which would not have been avoided by reasonable care and diligence of the Affected Party; or
- 26.3 which is not attributable to any breach or negligence of the Affected Party, and as a direct result of which the Affected Party is prevented or delayed in performing any of its obligations under this Agreement, and which may include, without limitation, events such as the following, provided the above conditions are satisfied in respect of both Parties:
  - i. war (whether declared or undeclared), acts of terrorism, sabotage, blockage, revolution, riot, insurrection, mobilization, civil commotion or acts of public enemies; in respect of the Bidder or Buyer;
  - ii. extreme weather events, storms or cyclones, wind and waves arising from a cyclone, action of the elements, epidemics, severe tropical storms, landslides, earthquakes, floods, bridge failure or road or rail closure due to washouts, impassability or natural disaster;
  - iii. strikes, lockouts, stoppages or other forms of industrial action;
  - iv. accidents (including accidental emissions of pollutants or hazardous substances), fire, explosion (including due to

- spontaneous combustion), radioactive contamination and toxic or dangerous chemical contamination;
- v. failure (other than a failure due to an act or omission of the Bidder) to obtain or renew (including renewal with less favorable conditions than the existing approvals) any Authorization;
  - vi. unavailability or major breakdown or any reduction in capacity of major equipment forming part of the Project including major coal preparation facilities or coal conveyor system;
  - vii. action or inaction of any government or Government Agencies or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, order, prohibition, intervention, requisition, requirement, direction, embargo or regulation or control on imports, exports or foreign exchange;
  - viii. Any change in law/ regulations in the country of origin from where coal is being supplied, on account of discontinuing of coal export from the country;

26.4 But does not include with respect to both Parties:

- i. financial hardship or inability of a Party or a Related Entity to make a profit or achieve a satisfactory rate of return from sale or consumption of Coal;
- ii. a change in market conditions or market prices, including loss of market share, loss of profit, loss of customers, loss of market share or reduction in the demand for Coal;
- iii. failure or inability to perform attributable to the market or sale price for Coal or currency availability or devaluation;
- iv. the inability of a Party to obtain financing, or financing on commercially acceptable terms, for the performance of any of its obligations under this Agreement.

**Exhibit 1.**

**GENERAL SPECIFICATION OF COAL**

Parameter	UOM	Type 1			Type 2		
		Range	Guaranteed Specification	Off-Specs Level/ Rejection limit	Range	Guaranteed Specification	Off-Specs Level/ Rejection limit
Gross Calorific Value (ARB)	Kcal/ Kg	5100 to 5700	5400	Below 5100	4200 to 4800	4500	Below 4200
Total Moisture	% Wt	18-28	23	Above 28	24-34	29	Above 34
Ash (ARB)	% Wt	02-12	8	Above 12	02-06	4	Above 6
Sulphur (ARB)	% Wt	0.1-0.8	0.6	Above 0.8	0.1-0.5	0.3	Above 0.5
Volatile Matter (ARB)	% Wt	25-40	-	Below 20	25-40	-	Below 20
Grindability (HGI)	HGI	45-60	-	Below 40	45-60	-	Below 40
Ash Fusion Temperature (IDT) (Reducing Atmosphere)	°C	1130-1200	-	Below 1100	1130-1200	-	Below 1100
Size (0-50 MM)	%Wt	Above 75	-	Below 70	Above 75	-	Below 70
Fines (Less than 0.2 mm)	%Wt	Less than 25	-	Above 30	Less than 25	-	Above 30
Annual Coal Consumption	MM TPA	2.5			11		

**NOTE:**

1. All percentages used above referred to percentages by weight.
2. The Buyer reserves its right, not to consider any bid offering coal having specification beyond the Off-spec Level specified herein above.
3. For the receipt of off-spec coal and in case of consumption of off-spec coal at TPS, Bidder shall be reimbursed/ paid cost of coal as detailed in Draft Coal Supply Agreement.
4. The analysis shall be as per prevailing ISO Standards from time to time.
5. Sampling & Analysis shall be as per Clause 12 of draft Coal Supply Agreement

***Exhibit 2.***

**BID FORM**

Adani Power (Mundra) Limited,

\_\_\_\_\_

Ahmedabad.

Sir,

We hereby Bid for the supply of Coal in the schedule subject to the following:

1. This Bid will hold good for a period of \_\_\_\_ Days from the last date of submission of Bids.
2. Quantity for Bid shall be ..... Type 1 and/ or ..... Type 2 Coal (strike out whichever is not applicable).
3. We confirm that this Bid is in full compliance to the provisions contained in the Bidding Documents.
4. We clarify that Coal offered by us will strictly conform to the specifications of the enquiry or to such modifications thereof as have been fully explained in our Bid.
5. We also note that the Adani Power (Mundra) Limited reserves the right to consider / reject any or all the Bids without assigning any reasons thereof and without being liable in any manner, whatsoever, to any Bidder for the same. We hereby agree to all the terms and conditions of the bidding documents
6. Failure to supply the Coal offered in the bid and accepted by the Buyer, after the agreement is entered will entail the levy of damages and liquidated damages as specified in the Agreement without prejudice to the rights of the Buyer to have recourse to the Contract Performance Guarantee.
7. We enclose herewith all the documents in Envelopes A, B & C, as required under this tender and abide by the tender terms and conditions.
8. We enclose herewith duly filled Price Bid in Envelope D.

***Place :***

***Authorized Signatory :***

*Date :*

Printed Name :

Designation :

Yours Faithfully

Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Instructions to Bidders (ITB)

***Exhibit 3.***

**PRICE ADJUSTMENT DUE TO VARIATION IN QUALITY PARAMETER(S)**

1. In the event of variations over the quality from base parameters, Price adjustments shall be carried out only when actual quality is within the Range specified in Exhibit 1.
2. If the Coal supplied is beyond Off-Spec limits (plant side inspection), Buyer shall have the Right to reject such Coal.
3. The detailed procedure for price Adjustment is provided in Exhibit 5

***Exhibit 4.***

**INSPECTION DURING THE COURSE OF SUPPLY:**

1. BIDDER to appoint Independent Inspection Agency (IIA) with consent of APMuL, at Load Port. The inspection agency shall be responsible for carrying out coal sampling and analysis at Load Port during Loading of Coal in the Vessel
2. Buyer to appoint Independent Inspection Agency (IIA) at the Delivery Point. The inspection agency shall be responsible for carrying out coal sampling and analysis at Delivery Point during Unloading of Coal from the Vessel at West Basin Port of APSEZ through Conveyer/Rail System.
3. The Buyer has the right to witness the sampling and analysis at all the places as mentioned in Clause 1 of this Exhibit 4 and the Bidder has the right to witness the sampling and analysis at all the places as mentioned in Clause 2 of this Exhibit 4.
4. The sampling, analysis and weighment of each shipment shall be undertaken in accordance with the current published ISO standards

**Exhibit 5.**

**PRICE SCHEDULE AS MENTIONED IN CLAUSE 2.3 OF THE ITB**

**PRICE SCHEDULE FORM**

1. Name of the Bidder:
2. Address:
3. Country of Origin:
4. Period of Shipment: As per requirement of APMuL
5. Total quantity offered: \_\_\_\_\_ MMTPA
6. Prices to be quoted in below table (Applicable Agreement Price)

S N	Particulars	Price	UOM
A	FOB		\$/Mt
B	Ocean Freight & Marine Insurance		\$/Mt
C	Other Charges (to be quoted in % of (A + B))		%
D	CIF (BASE PRICE: Delivered Price of Coal)	$A+B+[C\% \times (A+B)]$	\$/Mt

**NOTE:**

- i. FOB, Ocean Freight & Marine Insurance are variable as per Clause No. 8 below of this Exhibit.
  - ii. Other Charges shall be sum of Sampling & Analysis charges at Load Port Custom Clearance and Freight Forwarding Agency Charges and other Incidental Charges incurred at Loading Port.
7. Agreement Price shall be the cost of Coal as per the draft Coal Supply Agreement, and shall deem to include all cost such as FOB Coal Price, Ocean Freight, Marine Insurance, upto the Delivery Point of APMuL, and include all applicable duties and taxes.

**8. PRICE VARIATION:**

**8.1. FOB Price:**

- i. The imported Steam Coal to be supplied under this tender should be of any foreign origin. Further APMuL has specified range for each parameter of both type of coal and also linked the FOB prices to "HBA published by Government



of Indonesia" Price shall be decided as per below methodology in Sub-Clause (ii).

FoB Price for each shipment = final FoB price arrived basis Reverse Auction for applicable Guaranteed Specification X  $HPB_s$  /  $HPB_q$

Where,

$HPB_s$  shall be the price calculated using the below mentioned formula (Published by the ministry of energy and mineral resources of Indonesia), where applicable HBA Index shall be for the month of B/L and basis load port certificate of sampling and analysis.

$HPB_q$  shall be the price calculated using the below mentioned formula (Published by the ministry of energy and mineral resources of Indonesia) based on Guaranteed Specification and applicable HBA Index for the month of bid submission date.

**HPB Formulae for Coal having GCV more than 4300 kCal/kg**

$$HPB = (HBA * K * A) - (B + U)$$

Where (all parameters basis analysis at Loading Point)

$$K = GCV (ARB) / 6322$$

$$A = (100 - Total Moisture) / (100 - 8)$$

$$B = (Sulfur (ARB) - 0.8) * 4$$

$$U = (Ash (ARB) - 15) * 0.4$$

**HPB Formulae for Coal having GCV less than 4300 kCal/kg**

$$HPB = (HBA * K * A) - (B + U)$$

Where (all parameters basis analysis at Loading Point)

$$K = GCV (ARB) / 6322$$

$$A = (100 - Total Moisture) / (100 - 8 / FKA (i))$$

$$FKA = (((((100-8) / (100 - Total Moisture)) * Total Moisture)) + (100 - 8)) / 100$$

$$B = (Sulfur (ARB) - 0.8) * 4$$

$$U = (Ash (ARB) - 15) * 0.4$$

- ii. In case where Discharge Point GCV (ARB) is beyond inter-lab tolerance (72 kCal/kg) of Loading Point than below mentioned formula shall be used for deriving GCV (ARB):

$$\text{GCV (ARB)} = \text{GCV (ARB) at Discharge Point} + 72 \text{ kCal/kg}$$

- iii. In case where Discharge Point GCV (ARB) being higher than Loading Point GCV (ARB) no premium shall be applicable.
- iv. If the HBA for the month of B/L is not available then Purchaser shall pay in full a provisional invoice calculated by using latest available HBA Indices. Such provisional HPB is to be calculated using the latest available HBA Indices, with any balance discrepancy between the provisional invoice and the final invoice being dealt with once the HBA for the month of B/L is available.

## 8.2. Ocean Freight & Marine Insurance:

65% of quoted Ocean freight and Marine Insurance shall be Fixed for the entire duration of contract while balance 35% of the quoted Ocean freight & Marine Insurance shall be adjusted as per CERC escalation rate<sup>1</sup> as per below formula. If CERC escalation rate is not available at the time of billing the difference for the same shall be adjusted in subsequent invoices on availability.

*Adjusted Ocean Freight & Marine Insurance (35% of component) = Applicable Adjusted Ocean Freight & Marine Insurance for the previous month x notified CERC escalation rate for transportation of imported coal for the month of Bill of Lading<sup>2</sup>*

9. Any changes in royalties, taxes, permits, licenses and customs duties and charges in the country of Origin, causing economic hardship to the Seller, shall be authenticated and reimbursed by the Buyer on submission of documentary proof.
10. Price of coal shall be payable to the successful bidder based on methodology mentioned above.
11. The prices are to be quoted as per the above format for the coal specification indicated at Exhibit 1. of ITB. However, the same shall be evaluated as elaborated in the bid Document.
12. Validity of the Offer to remain valid up to **90 days** from the date of submission of Bid.

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<sup>1</sup> CERC Escalation rate shall mean annual escalation rates published by CERC from time to time at six months interval in respect of escalation rate for transportation of imported coal.

<sup>2</sup> The Applicable CERC Escalation rate for transportation of imported coal for the month of Bill of Lading shall mean escalation rate published divided by 12 months

13. The evaluation to determine successful bidder shall be based on lowest delivered price as per Format given above and subsequent negotiations.
14. The detailed invoicing and payment terms shall be as stipulated in Clause 11 - BILLING AND PAYMENT of Draft Coal Supply Agreement.

Place :

Authorized Signatory :

Date :

Name :

Designation :

**Exhibit 6.**

**DATA TO BE FURNISHED BY THE BIDDER**

**1.0 GENERAL**

1.1 Name of the BIDDER (names of the companies in case of consortium and the International company which wishes to participate as qualifying Bidder): --  
-----

1.2 Address of the BIDDER : -----

1.3 Telegraphic Address : -----

1.4 Telex No. / Fax No. : -----

1.5 E-mail Address : -----

1.6 Name and designation of officer  
to whom all correspondence shall be  
made for expeditious co-ordination : -----  
----

1.7 Bidders proposal No. & Date : -----  
----

**2.0 GENERAL DATA (for minimum quantity stipulated in QR of this ITB)**

2.1 Details of 5 Major Customers/ Major Customer for such quantity: -----  
-----

2.2 Quantity to 5 Major Customers in last 3 FY/ Major Customer for such quantity:  
-----

Place : Authorized Signatory :

Date : Name :

Designation :

*Exhibit 7.*

**COAL SUPPLY AGREEMENT**  
**PROFORMA OF BANK GUARANTEE FOR BID SECURITY**

In consideration of Adani Power (Mundra) Limited having its registered office at Adani House, Near Mithakhali Six Roads, Navarangpura, Ahmedabad, Gujarat, India (hereinafter called 'Buyer' which expression shall unless repugnant to the subject or context includes its successors and permitted assigns) having agreed to exempt ( \_ \_ \_ \_ \_ ) (hereinafter called the said Bidder(s), which expression shall unless repugnant to the subject or context includes his successors and assigns) from the demand under the terms and conditions of **Tender No. APMuL/19-20/CoalTender01 Dated: 29/11/2019** hereinafter called 'The Said Bid' of such bid security for the due fulfillment by the said Bidder(s) of the terms and conditions contained in the said Bid ( \_ \_ \_ \_ ) for ( \_ \_ \_ \_ ) on production of Bank Guarantee for INR XX (INR only).

1. We ( \_ \_ \_ \_ \_ ) Bank hereinafter referred to as 'the Bank' do hereby undertake to pay to the Buyer unconditionally on his mere demand an amount of not exceeding INR ( \_ \_ \_ \_ ) INR only against any loss or damage caused to or suffered by the said Buyer by reason of any breach by the said Bidder(s) of any of the terms and conditions contained in the said Bid. The decision of the Buyer as to any such breach having been committed and loss suffered shall be final and binding on us.
2. We ( \_ \_ \_ \_ \_ ) Bank do hereby undertake to pay the amounts due and payable under this guarantee without any demur merely on a demand from the Buyer stating that the amount claimed is due by way of loss or damage caused to or would cause to or suffered by the Buyer by reason of any breach by the said bidder of any of the terms or conditions contained in the said bid or by reason of the said Bidder's failure to keep the Bid open. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR ( \_ \_ \_ \_ ) INR only.
3. We ( \_ \_ \_ \_ \_ ) Bank further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the finalization of the said Bid and that it shall continue to be enforceable till the said bid is finally decided and Award is placed on the successful Bidder and or till all the dues to the Buyer by virtue of the said Bid have been fully paid and its claim satisfied or discharged or till a duly authorized officer of the Buyer certifies that the terms and conditions of the said bid have been fully and properly carried out by the said Bidder(s) and accordingly discharges the guarantee. Unless a Demand or claim under this guarantee is made on us in writing on or before the ( \_ \_ \_ \_ ) to include 6 (six) months claim over and above the period i.e. ( \_ \_ \_ \_ ) (date) the validity of the Bank Guarantee in the Bid, we shall be discharged from all liability under this guarantee thereafter.

4. We ( \_ \_ \_ \_ \_ ) Bank, lastly undertake not to revoke this guarantee during its currency except with the prior written consent of the Buyer in writing.

IN WITNESS WHEREOF the Bank has executed these present the day and year first above written.

Signed and delivered for and on behalf of the bank ( \_ \_ \_ \_ \_ )

Signature in the capacity of ( \_ \_ \_ \_ \_ )

Place :

Authorized Signatory\* :

Date :

Printed Name :

Designation :

*Exhibit 8.*

**COAL SUPPLY AGREEMENT**

**PROFORMA OF BANK GUARANTEE FOR SUPPLY OF COAL**

In consideration of Adani Power (Mundra) Limited having its registered office at Adani House, Near Mithakhali Six Roads, Navarangpura, Ahmedabad, Gujarat, India (hereinafter called 'Buyer' which expression shall unless repugnant to the subject or context includes its successors and permitted assigns) having agreed to exempt ( \_ \_ \_ \_ ) (hereinafter called the said Bidder, which expression shall unless repugnant to the subject or context includes his successors and assigns) from the demand under the terms and conditions of Coal Supply Agreement No. \_\_\_\_\_ for ( \_ \_ \_ \_ ) hereinafter called 'Agreement' for the due fulfillment of the performance as per terms and conditions contained in the said Agreement ( \_ \_ \_ \_ ) for ( \_ \_ \_ \_ ) on production of Bank Guarantee for INR (Indian Rupees only).

1. We ( \_ \_ \_ \_ \_ ) Bank hereinafter referred to as 'the Bank' do hereby undertake to pay to the Buyer unconditionally on his mere demand an amount of not exceeding INR ( \_ \_ \_ \_ ) against any loss or damage caused to or suffered by the said Buyer by reason of any breach by the said Bidder of any of the terms and conditions contained in the said Agreement. The decision of the Buyer as to any such breach having been committed and loss suffered shall be final and binding on us.
2. We ( \_ \_ \_ \_ \_ ) Bank do hereby undertake to pay the amounts due and payable under this guarantee without any demur merely on a demand from the Buyer stating that the amount claimed is due by way of loss or damage caused to or would cause to or suffered by the Buyer by reason of any breach by the said Bidder of any of the terms or conditions contained in the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR ( \_ \_ \_ \_ )
3. We ( \_ \_ \_ \_ \_ ) Bank further agree that the guarantee herein contained shall remain in full force and effect during the period as provided in the said Agreement and/ or till all the dues to the Buyer by virtue of the said Agreement have been fully paid and its claim satisfied or discharged or till a duly authorized officer of the Buyer certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Bidder and accordingly discharges the guarantee. Unless a Demand or claim under this guarantee is made on us in writing on or before the ( \_ \_ \_ \_ ) to include 6 (six) months claim over and above the period i.e. ( \_ \_ \_ \_ ) (date) the validity of the Bank Guarantee in the Bid, we shall be discharged from all liability under this guarantee thereafter.
4. We ( \_ \_ \_ \_ \_ ) Bank, lastly undertake not to revoke this guarantee during its currency except with the prior written consent of the Buyer in writing.

Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Instructions to Bidders (ITB)

IN WITNESS WHEREOF the Bank has executed these present the day and year first  
above written.

Signed and delivered for and on behalf of the bank ( \_ \_ \_ \_ \_ )

Signature in the capacity of ( \_ \_ \_ \_ \_ )



**Exhibit 9.**

**FORMAT FOR POWER OF ATTORNEY FOR NOTARISING**

(To be executed on appropriate value of stamp paper)

Know all men by these presents, I/We, ..... Director of .....(name and address of the registered office) (If partnership firm then all the partners have to execute the power of attorney) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of ..... and presently residing at ....., who is presently employed with us and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for supply of coal to **Adani Power (Mundra) Limited**, \_\_\_\_\_, India (**APMuL**) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the APMuL, representing us in all matters before the APMuL, signing and execution of all agreements including undertakings consequent to acceptance of our bid, and generally dealing with the APMuL in all matters in connection with or relating to or arising out of the aforesaid bid and/or upon award thereof to us and/or till the entering into of the necessary Agreement with the APMuL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

SPECIMEN SIGNATURE OF THE ATTORNEY:

IN WITNESS WHEREOF, the I/We as Directors of .....Company has/have hereunto set and subscribed its seal on the day, month, year and place first herein above written.

The Common seal of .....Ltd is hereunto affixed pursuant to the resolution of the Board of Directors of the said Company passed on .....in the presence of Mr. ...., Director, duly authorised in that behalf in the presence of

(Signature, name, designation and address of person authorised by Board Resolution (in case of Firm/Company)/ Partner in case of Partnership Firm

Witnesses:

1.

2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney) Person identified by me/personally appeared before me/signed before me/Attested/Authenticated\*

(\*Notary to specify as applicable)

(Signature, Name and Address of the Notary)

Seal of Notary

Registration Number of the Notary

Date:.....

**NOTES:**

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a Board or Shareholders Resolution/ Power of Attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.

**Exhibit 10.**

**REVERSE AUCTION PROCESS and RELATED INSTRUCTIONS FOR REFERENCE**

**(To be printed on Letter Head)**

**DECLARATION LETTER**

Date: \_\_\_\_\_

To

ADANI POWER (MUNDRA) LIMITED,  
1st FLOOR, SOUTH BLOCK,  
ADANI CORPORATE HOUSE,  
SHANTIGRAM, NEAR VAISHNODEVI CIRCLE,  
SG HIGHWAY, AHMEDABAD – 382421  
GUJARAT, INDIA

Whereas

M/s. ADANI POWER (MUNDRA) LIMITED (herein referred to as “the Buyer”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) have invited bids from Bidders for the supply for foreign origin coal for Mundra Power Project at Mundra in Kutch District, Gujarat State, India..

And, whereas

M/s. \_\_\_\_\_ (hereinafter called “the Bidder”, which expression shall, unless repugnant to the subject or context, includes its successors, administrators and assigns) have expressed their intent to bid for supply of such coal. Under the terms and conditions of Tender no. dated XX and the Bidder has expressed to participate in the online reverse auction planned by the Buyer on date XX and has agreed to submit a refundable EMD of Rs 10,00,000 (INR Ten Lakhs Only) and bid security for an amount of Rs. 1,50,00,000 (INR One Crore and Fifty Lacs Only), as per the terms & conditions of this Bid Document.

The Bidder has well understood the terms & conditions of the Tender and terms & conditions of the online Reverse Auction and unconditionally agrees that the EMD and bid security is liable to be forfeited in either of the following circumstance:

- a) If the Bidder withdraws its Bid submitted online in the Reverse Auction.

- b) In case of a Successful Bidder, if he fails to sign/ accept/ execute the Agreement issued by the Buyer subsequent to successful online submission of winning bid by the Bidder in the Reverse Auction.

Forfeiture of the EMD and bid security amount in above circumstances shall be accepted by the Bidder without demur and any claim for refund of the EMD and bid security shall not be raised by the Bidder.

**(Bidder's Name)**

**(Sign & Stamp)**

**Authorized Signatory**

**Name:** \_\_\_\_\_ **Designation:**

\_\_\_\_\_

**Date:** \_\_\_\_\_

**Place:** \_\_\_\_\_

**Legal Disclaimer for using [www.adanipower.procuretiger.com](http://www.adanipower.procuretiger.com)**

**Definitions:**

1. "Website" refers to [www.adanipower.procuretiger.com](http://www.adanipower.procuretiger.com)
2. "Services" mean all the functional services available at Website including on-line submission of bids, conducting e-auction, etc.
3. "User" means any person/ company who is using Website.

**Introduction:**

Being allowed to access the Website, User is bound to the terms and conditions as set out hereinafter. These terms and conditions are important to protect all the Users and Buyer. Please note that by accessing and browsing the Website, Users acknowledge to have read the terms and conditions, accept and agree to bind by the same, without limitation or qualification.

**Website Content:**

"Adani" is the registered trademark of the Buyer and its affiliates. Any unauthorized use of this trademark, in part or in whole, by anyone without the written consent of the Buyer shall be dealt with in accordance with the applicable laws and procedures.

The intending Users agree that they will not upload any malicious, abusive, frivolous or otherwise inappropriate and objectionable material on the Website. Any breach to above will result in appropriate legal proceeding and User may be blacklisted for usage of the Website.

Buyer makes reasonable effort to ensure the information provided on its website is accurate but does not guarantee or warrant its accuracy, adequacy, correctness, validity, completeness or suitability for any purpose. The information/ material provided on the website, is provided on "as is" basis. Buyer expressly disclaims to the maximum limit permissible by Law, all warranties, expressed or implied, including but not limited to implied warranties of merchantability, fitness or a particular purpose and non-infringement. Buyer disclaims all responsibility for any loss, injury, liability or damage of any kind resulting from and arising out of, or any way related to:

1. Any errors in or omissions from the Buyer's website and its content.
2. Unavailability of the Website or any part thereof.
3. Use of any software or hardware in connection with the Website.

#### **Website Usage:**

Each registration is separate for every User. Therefore, Buyer does not permit any of the following:

1. Sharing your User ID and password
2. Any part of the Website being cached in proxy servers and accessed by anyone without registration

Users are solely responsible for all actions conducted with its unique ID and agree not to use unique ID for any unauthorised purpose. Users agree not to disclose its unique ID to any third party and to take all necessary precautions to prevent unauthorised use of such unique ID by any third party.

Buyer reserves the right to block/ restrict the User to access the Website at any time without any explanation.

Buyer does not warrant to:

1. The services will meet any requirements of all or any User.
2. The services will be uninterrupted, timely, secure or error-free.
3. The solutions that may be obtained from the use of the services will be accurate or reliable.
4. The quality of any services, information, or other material obtained by User through the service will meet the expectations.

Any material downloaded and used for professional or other purposes shall be at the risk of the User and any services utilized through the website shall not create any warranty.

**Alterations:**

Buyer reserves the right to terminate, suspend, discontinue or make changes to any aspect of Website and information & services provided on the Website without prior information and without any liability to Buyer.

These terms apply exclusively to User's access to use of the Website and do not alter the terms or conditions of any other agreement User may have with the Buyer.

**Security:**

All reasonable care and precautions have been taken to secure the website including provision of a secure and robust operating environment; however the nature of communication through internet is such that Buyer cannot undertake to maintain privacy or confidentiality of communications transmitted at the internet from interference by third parties.

**Indemnity:**

The Users shall indemnify Buyer and its employees including Directors from any loss or damage arising directly or indirectly (including special, incidental or consequential loss or damage) suffered as a result of usage of the Website and its contents.

Buyer does not guarantee that the information downloaded from its website is completely error-free and accurate or the services that makes Buyer website available are free of viruses or harmful components. Although due care has been taken to make the database completely reliable and error free, Buyer for any liability arising out of any such errors in the data base shall not be held responsible.

Users hereby agree to waive any rights, claims or causes or action against Buyer arising out of or related to the use, whether authorised or unauthorised, of its unique ID.

Buyer shall not be held responsible if any information/page is downloaded from its website and after downloading complete/ partial, text/ information is altered/ removed/ obscured contained therein.

Buyer makes no representation about the suitability, reliability, availability and timeliness of the products and services contained on its website or any purpose. Buyer hereby disclaims all warranties and conditions with regard to the information, products, services, including all implied warranties and conditions of merchantability, fitness for a particular purpose, title and non-infringement.

**Limitation of Liability:**

Under no circumstances Buyer shall be made liable to any User for:

1. Any direct, indirect punitive, incidental, special, consequential damages or any damages whatsoever, including, without limitation, damages or loss of use, data or profits, arising out of or in any way connected with the use or performance of website, with the delay or inability to use its website or related services the provision of or failure to provide services or form any information, software, products and services obtained through website, or otherwise arising out of the use of the website whether based on contract, negligence, strict liability or otherwise, even if Buyer has been advised of the possibly of damages.
2. Claim attributable to errors, omission or inaccuracies in any information.

Any form or work done or services information provided by Buyer or any person or persons associated with Buyer vide their Offline help is provided as a support service without any liability whatsoever. Work done, services rendered or information provided, are subject to User's own verification and professional expertise opinions/advice. Our work and services are not to be deemed as legal advice.

**Privacy Policy:**

In case of visiting this Website to read or download information, it must be known that Buyer collects and stores a standard set of Internet related information, such as an Internet Protocol(IP) address, the date and time, the type of browser and operating system used, the pages(s) visited.



All information is collected to help the Buyer for making this Website more useful to our customers and is only used for statistical purposes. We collect and use information such as name, telephone number, email address etc., in order to:

- Process bids;
- Maintain Record, etc.

Except as set out in this privacy policy, Buyer will not disclose any personally identifiable information without permission, unless we are legally entitled or required to do so or if we believe that it is necessary to protect and/or defend our rights, property or personal safety, etc.

**Governing Law & Jurisdiction:**

Terms and conditions mentioned in this document are governed by and to be interpreted in accordance with relevant Indian laws, both substantive and procedural. In the event of any dispute arising in relation to these terms and conditions or any dispute arising in relation to the Website, whether in contract or tort or otherwise, the Indian courts at Ahmedabad, Gujarat shall have exclusive jurisdiction over such dispute.

**Change of Terms and Conditions:**

Buyer reserves all the right to add/ change/ modify any time without any prior notice the contents of this document.

### **Rules and regulations for the Reverse Auction process**

1. Bid Price: The L1 prices arrived pursuant to opening of the Price Bid as per Clause 20 of ITB for each type of coal shall form the basis for starting prices for Reverse Auction.
2. Bidders must be a registered user with Login ID and Password prior to start of Reverse Auction. Bidders shall be required to participate as per the Reverse Auction date & time communicated to them through e-mail.
3. Bidders are advised to log in at least fifteen minutes before the Reverse Auction time to avoid any inconvenience.
4. Bidders are advised to use the same system/ device which is used during training of Reverse Auction process. Use of a different system may require system setting to be done which would be difficult just before scheduled Reverse Auction.
5. The L1 price discovered for each Type of coal on the basis of Physical Price Bid submitted shall form the starting price for Reverse Auction.
6. **Auction extension time :**  
If a valid bid is placed within 5 minutes of End Time of the Reverse Auction, then Reverse Auction duration shall get automatically extended for another 5 minutes from the existing end time. It may be noted that the auto-extension will take place only if a valid bid comes in those last 5 minutes. If a bid does not get accepted as the lowest bid, the auto-extension will not take place even if that bid might have come in the last 5 minutes. The above process will continue till no bid is received in last 5 minutes which shall mark the completion of Reverse Auction. However, bidders are advised not to wait till the last moment to enter their bid to avoid complications related to internet connectivity, their network problems, system crash down, power failure etc.
7. Foul/ Slang/ Bad Language must not be used in Chatting during Live Reverse Auction. Also bidder must not ask confidential information about Reverse Auction process.

8. **Bid price:** The Bidder has to quote the Base Price/Delivered Price for each type of coal in US Dollar. The detailed calculations are as shown in Exhibit 5 for calculation of Base Price/Delivered Price. Bidders will be able to see Base Price/Delivered Price in US \$ on their screen, Bidder has to reduce the Base Price/Delivered Price so as to beat the starting price/current L1 price (evaluated Price) displayed on the screen to become L1 Bidder.
9. **Bid quantity for Type 2 Coal:** The Bidder shall have the option, subject to the qualification requirements as detailed in this ITB, to increase/ decrease its bid quantity offered by +/- 0.5 MMTPA, subject to minimum quantity offered being not less than 2 MMTPA.

#### 10. Procedure of Reverse Auctioning:

- a. APMuL will evaluate/calculate the Base Price/Delivered Price of each of the eligible Bidders as per quoted price submitted in their Price Bid.
  - b. Online Reverse Auction: The 'Opening L1 Price' (i.e. Start Price for Reverse Auction) shall as be intimated by APMuL.
  - c. The minimum Bid Decrement shall be \$ 0.05. As such, the Bidders are required to necessarily reduce their evaluated Price by minimum one decrement (i.e. \$ 0.05) to beat the starting price/current L1 price (evaluated Price) displayed on the screen to become L1 Bidder. However, Bidders are free to decrease their prices by any value more than \$ 0.05 in multiple thereof.
  - d. The above process at sr.no. (iii) Above will continue as an iterative process till end of Reverse Auction.
  - e. After completion of the online Reverse Auction, the Closing Price shall be available for further processing.
11. Post Reverse Auction Procedure: APMuL will proceed with the Lowest Bid received in the Reverse Auction for further processing and award considerations.
  12. Message/ Information published by Buyer during Reverse Auction shall be binding to all bidders.
  13. Buyer reserves the right to award the Contract as per Buyer's discretion irrespective of live Reverse Auction rank on final bid submitted by the bidder during Reverse Auction and it would be binding on the bidder to accept the same.
  14. All the bidders submitting the final bid agree to make a firm offer in line with the tender requirement which Buyer may accept to form a contract. If the selected bidder refuses to accept the Order post Reverse Auction, EMD and/or bid security, as submitted by him, shall be liable to be forfeited.

15. Buyer reserves the right to ban the bidder from participating in Reverse Auction without any explanation at any stage of Reverse Auction, in case of misbehavior in Reverse Auction platform.
16. Buyer reserves the rights to extend/ cancel the Reverse Auction process and bidders will be notified of extension/ cancellation, if any.
17. All prices submitted by Bidder shall be Landed Price including all taxes and duties, freight & transit insurance etc. unless specified otherwise by Buyer prior to commencement of Reverse Auction.
18. Bidder should have written confirmation in advance regarding participation in the Reverse Auction (mentioning the Authorized person's name and details) from the Buyer.
19. Bidder shall confirm final price with detailed break-up as per Exhibit 3 of ITB within One Day of completion of Reverse Auction.
20. Buyer shall not have any liability to bidders for any interruption or delay in access to the Reverse Auction website irrespective of the cause. In such cases, the decision of Buyer shall be binding on the bidders.

Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Draft Coal Supply Agreement (CSA)

**SECTION C**

**Draft Coal Supply Agreement (CSA)**

**BETWEEN**

**ADANI POWER (MUNDRA) LIMITED (APMuL)**

**("Buyer")**

**AND**

**[-----]**

**As Supplier**

**Dated -- / -- / --**

Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Draft Coal Supply Agreement (CSA)

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Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Draft Coal Supply Agreement (CSA)

**Agreement Between**

**ADANI POWER (MUNDRA) LIMITED**

**And**

[-----]

**THIS AGREEMENT IS MADE ON THE \_\_\_\_\_ day of \_\_\_\_\_ 2019**

**BY AND BETWEEN**

ADANI POWER (MUNDRA) LIMITED or Buyer, a Company incorporated under the Companies Act 1956, is a part of the "Adani Power" with its registered office located at Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad – 380009 Gujarat, India (hereinafter referred to as the "APMuL" or "Buyer").

AND

[ \_ \_ \_ ] with its principal office located at [ \_ \_ \_ ] (hereinafter referred to as the "Supplier")

(Both "Buyer" and "Supplier" shall be individually referred to as a "Party" and collectively as the "Parties".)

**RECITALS**

The Parties agreed to execute this Agreement setting out the appointment of the Supplier having the sole responsibility to perform the Work in accordance with the terms of the Agreement, and the Supplier hereby agrees and undertakes to perform and comply with his all the obligations under this Agreement and to be solely responsible for the same and to carry out the Work (as defined hereinafter) as detailed in this Agreement.

**A.** WHEREAS, Adani Power (Mundra) Limited has built up a generation facility designed, constructed, owned, operated, maintained and located on a site owned by Adani Power (Mundra) Limited in Mundra in Kutch District, Gujarat State, India (the "Facility");

Adani Power (Mundra) Limited (APMuL)  
Bids for supply of Coal on CIF (Cost, Insurance & Freight)  
Draft Coal Supply Agreement (CSA)

- B.** WHEREAS, it is contemplated that the Facility will produce electricity and will consume coal with the specifications set forth in this Agreement as one of fuel;
- C.** WHEREAS, Adani Power (Mundra) Limited desires to purchase 2.5 Million (+/-25%) Metric Tonnes per Annum (MMTPA) of Type 1 and 11 Million (+/-25%) Metric Tonnes Per Annum (MMTPA) of Type 2 of steam coal of foreign origin from Supplier, and Supplier desires to supply, sell, and deliver the Facility's coal requirements for operation on the terms and conditions set forth herein; and
- D.** WHEREAS, Supplier to be liable for all costs necessary for insurance, transportation and other incidental costs necessary to bring the coal upto the delivery point as defined hereunder.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Supplier and APMuL hereby agree as follows:



## 1. Definitions, Rules of Construction and Preparation

### A. Definitions

**"Agreement or Coal Supply Agreement"** shall mean this formal Agreement executed between the Buyer and the Supplier which includes all Schedules appended to it.

**"Agreement Year"** shall mean the period beginning with the Commencement Date and ending one year thereafter, and thereafter shall mean each one year period.

**"Affiliate"** shall in relation to a company, corporation or entity mean, any second company, corporate, or entity that directly or indirectly controls, or is controlled by, or is under common control of the first company, corporation, or entity. For the purposes of this Agreement, "control" in relation to any company, corporation or entity, shall mean:

- (a) ownership or control (whether directly or otherwise) of more than fifty percent (50%) of the equity share capital, voting capital or the like of the controlled entity; or
- (b) ownership of equity share capital, voting capital, or the like by contract or otherwise, conferring control of, power to control the composition of, or power to appoint, more than fifty percent (50%) of the members of the board of directors, board of management, or other equivalent or analogous body of the controlled entity.

**"Applicable Law"** includes all applicable Indian statutes, enactments, Acts of the State Legislature or Parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Governmental Authority, statutory authority, tribunal, board, court or recognized stock exchange, as may be applicable;

**"Calendar Periods"**: The terms "day", "week", "month", and "quarter" shall mean, respectively, a period of 24 hours commencing at 00:00 a.m. local time, a period of seven days beginning at 00:00 a.m. on Sunday, a calendar month, a calendar quarter. The term "year" shall mean a period of 365 days, except that if February has 29 days during any such period, the term "year" shall mean a period of 366 days.

**"CIF"** (Cost Insurance and Freight), shall mean the cost of the cargo and the insurance and freight necessary to bring the Coal to the unloading port designated by the APMuL and has the meaning set forth in INCOTERMS - 2010.

**"Coal"** means the steam coal, to be delivered by the Supplier as per the provisions of this Agreement.

**"Commencement Date"** shall be the date of first delivery of coal to be supplied under this Agreement at the Delivery Point.

"**Delivery Point**" for Coal will be upto the West Basin Port of Adani Port and Special Economic Zone Limited (APSEZ) (hereafter referred as Discharge Port).

"**Discharge Port**" means the port of discharge as provided in Clause 8, or any other designated Port nominated by APMuL from time to time, if required, in accordance to the provision of Clause 7.1.

"**Effective Date**" shall mean the date of signing of this Agreement.

"**Facility**" means the generation facility, including all additions, replacements and substitutions thereto, which APMuL shall cause to be built and operated on the Site.

"**Financial Year**" shall mean the period beginning at 00.00 hours of 1st April and ending 24.00 hours of 31st March of the subsequent year.

"**FOB**" (Free on Board) has the meaning set forth in INCOTERMS - 2010.

"**General Specification**" means the specification of the quality of the coal set out in Exhibit A

"**Guaranteed Specification**" means the specification of the quality of the coal set out in Exhibit A which shall form the basis of the Agreement price as set out in Section [10](#).

"**Independent Laboratory**" shall be an internationally recognized, reputable, capable and accredited test facility which expression shall, unless it be repugnant to the subject or context thereof, mean and include its successors and assigns appointed thereof..

"**Independent Inspection Agency**" shall have the meaning as described in Section [12](#).

"**Initial Term**" shall mean period starting from the Commencement Date to Two (02) Agreement Years.

"**INR**" shall mean Indian National Rupee.

"**ITB**" shall refer to the bid document(s) and any amendment/ extension thereof for the purpose of selecting the Supplier for supply of coal against this Agreement.

"**ISO**" refers to International Organisation for Standardisation.

"**Loading Point**" shall be the port of loading of each vessel for supply of Coal by Supplier to the Buyer as per the provisions of this Agreement.

"**Parties**" shall refer to the signatories to this Agreement, namely [ \_ \_ \_ ] (the Supplier) and Adani Power (Mundra) Limited (the APMuL).

"**Permit**" means any valid waiver, exemption, variance, franchise, permit, authorization, license or similar order of or from any Federal, state or local government, authority, agency, court or other body having jurisdiction over the matter in question, as in effect from time to time.

**"Sections of the Agreement" or "Clause":** The term "Section" or "Clause" when used in combination with a section number refers to that Section of this Agreement. Numbered Sections of this Agreement do not include the word "Section" immediately prior to such number.

**"Shipment"** shall mean each consignment of Coal transported and delivered by Supplier under this Agreement

**"Site"** means the tract of land owned by APMuL on which the Facility is built up.

**"General Specification"** means the specification of the quality of the coal set out in Exhibit A.

**"Term"** means the fixed term of this Agreement and any extended fixed term.

**"Terms of Art":** Certain terms used in this Agreement are terms of art in the coal and electric generation industries and have commonly understood meanings. Examples include, but are not limited to, terms such as "Metric Tonne," "Kcal / Kg," "as received," "steam," "ash" and other terms of this nature. The parties hereto agree that such terms shall have such commonly understood meanings and that it is not necessary to define such terms.

**"Thermal Power Station or "TPS"** shall mean the 4620 MW thermal power station of APMuL.

**"Tonne(s)"** means metric tonne(s) equivalent to 1,000 Kilograms.

**"US Dollars", "Dollars", "USD", "US\$", "\$", "Cents"** where used shall refer to the currency of the United States of America.

**"Work"** shall include all the roles/ task/ obligations/ representation and warranties of the Supplier as detailed elsewhere in this Agreement, including but not limited to supply of coal in accordance to the terms and conditions of this Agreement.

## **B. Rules of Construction and Interpretation**

- (a) Words imparting singular shall also include plural and vice-versa and any word defined in the singular shall have the corresponding meaning when used in the plural and vice versa.
- (b) The titles or headings in this Agreement are for convenience and easy reference only and shall not be taken into account for the purpose of construction or interpretation of this Agreement.
- (c) Any reference to "person" shall include companies, firms, corporations and associations or bodies of individuals, whether incorporated or not and shall include their respective successors in business and permitted assigns
- (d) A reference to any gender includes the other gender.

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- (e) Unless otherwise specified, a reference to a Section, Clause, Schedule, Annexure or paragraph is a reference to a Section, Clause, Annexure, and Schedule, Annexure or paragraph of this Agreement.
  - (f) The terms "include", "includes" and "including" shall be deemed to be suffixed with the words "without limitations", whether or not so followed.
  - (g) The terms "hereof", "hereto", "herein" and derivative or similar words refers to this Agreement or specified Sections of this Agreement, as the case may be;
  - (h) Reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, and any reference to statutory provision shall include any subordinate legislation made from time to time under that provision

## ***2. Term of the Agreement***

2.1 This Agreement shall be effective from the "Effective Date" and, unless terminated earlier in accordance with the provisions hereof, shall continue for an Initial Term which shall end two (02) Agreement Years after the Commencement Date.

2.2 Extension: Upon the expiration of initial term of the agreement, this Agreement shall be extended on mutual agreement between Buyer, Seller and Gujrat Urja Vikash Nigam Limited (hereinafter referred to as "GUVNL", being the principle buyer for APMuL) by a period of one (01) year (an "Extended Term"), on notice by either party to another, i.e., Buyer or Seller, (03) months prior to such expiration that it desires to extend or terminate the Agreement.

## ***3. Commencement of Deliveries***

Supplier shall commence deliveries of coal hereunder pursuant to the first monthly Order of APMuL sent to Supplier pursuant to Section 6 within 30 days from Effective Date, or as notified by the Buyer.

## ***4. Conditions Precedent***

The rights and obligations of Parties under this Agreement are subject to the satisfaction of the following conditions precedent, obligations of which shall commence from the Effective Date:

4.1 Supplier's Condition Precedent: The Supplier shall have obtained from the lawful authority all requisite sanctions, approvals, licenses and consents required to carry out the obligations under this Agreement in accordance with the terms of this Agreement.

4.2 The final execution of all agreements, leases, licenses and other undertakings of any kind deemed necessary or desirable by APMuL on terms satisfactory to APMuL, that are necessary to carry out the Works.

4.3 Satisfaction of Conditions Precedent: Supplier shall provide APMuL notice of satisfaction of the conditions precedent specified in Section 4.1 and 4.2 within one month of signing of this Agreement. Failure to satisfy any condition precedent shall be grounds for termination of this Agreement by APMuL.

## ***5. Source of Coal***

Subject to Buyer's right the coal to be supplied hereunder shall be of Non Coking coal in bulk of foreign Origin or foreign Origin Steam coal in bulk or Steam (non coking) coal of foreign Origin in Bulk or foreign Origin Steam Coal in bulk.

## ***6. Quantities, Estimates and Orders***

**Annual Coal Requirements:** Supplier agrees to sell and deliver coal to APMuL, pursuant to Orders sent by APMuL to Supplier in accordance with Section 6.1, and APMuL agrees to purchase from Supplier 2.5 Million (+/-25%) Metric Tonnes per

Annum (MMTPA) of Type 1 and/ or (strike out whichever is not applicable). Million (+/-25%) Metric Tonnes Per Annum (MMTPA) of Type 2 of steam coal of any foreign origin, (excluding any shipping tolerance thereof for each Shipment) per delivery year of the coal requirements of the Facility for the production of steam and generation of electricity including sufficient quantities for testing and stockpile purposes on the terms and conditions set forth in this Agreement.

### **6.1 Agreement Period Schedule**

The process for determining the schedules for delivery of Agreement Quantity of Guaranteed Specification Coal during Agreement Year shall be as follows:

#### **Yearly Quantities**

The process for each Agreement Year shall be as follows:

- i. Not less than Sixty (60) days before the start of each Agreement Year, the Buyer shall provide the Supplier with its expected requirements for Guaranteed Specification Coal for that Agreement year and the dates on which such deliveries are required to be delivered at the Delivery Point, broken down into months.
- ii. Within fifteen (15) days of receipt of such notice from the Buyer, the Supplier shall provide the Buyer with a provisional Delivery Annual Schedule, showing the Shipment schedule for such quantities, broken down into months.
- iii. Within fifteen (15) days of receipt of such Delivery Annual Schedule, the Buyer shall notify the Supplier of changes (if any) to the proposed Delivery Schedule and submit the final Delivery Annual Schedule after Mutual discussion.

#### **Quarterly and Monthly Quantities**

The process for each month during the Agreement Year shall be as follows:

- i. Not less than thirty (30) days before the start of each month during an Agreement Year, the Buyer shall provide the Supplier with its expected requirements for Guaranteed Specification Coal for that month, together with expected requirements for succeeding two months quantities of the Agreement Year and the dates on which such deliveries are required to be delivered at the Delivery Point for the following months.
- ii. Within five (5) days of receipt of such notice from the Buyer, the Supplier shall provide the Buyer with a provisional Delivery Schedule,

showing the Shipment schedule for such quantities for the following month.

- iii. Within ten (10) days of receipt of such Delivery Schedule, the Buyer shall notify the Supplier of changes (if any) to the proposed Delivery Schedule and submit the final Delivery Schedule after Mutual discussion.

## **6.2 Schedule Amendment**

If the Buyer anticipates that it will be prevented or restricted from receiving any Coal consignment at the Delivery Point or from accepting or otherwise receiving shipments, the Buyer shall give the Supplier a written request of 15 (fifteen) days to vary any of the schedules referred to in Clause 6, and the Supplier shall revise any of the Schedule to address the concerns of the Buyer.

## **6.3 Permissible Variation**

The actual quantity of Guaranteed Specification Coal to be loaded onto the vessel at the Loading Point may vary from the amounts notified by the Supplier to the Buyer in the Nomination to the extent of 10% (Ten percent) provided that Supplier shall supply such quarterly quantities as specified by the Buyer in terms of Clause 6.1.

## **6.4 Stockpiles:**

APMuL has established a storage stockpile of approximately 1.20 million Metric Tonnes of coal at Discharge Port. The additional storage stockpile can accommodate approximately 0.15 million Metric Tonnes of coal at the Facility.

**6.5 Third Party Purchase:** Buyer reserves the right to purchase coal from other suppliers with not later than 15 days intimation to Supplier without any compensation or liability under this Agreement. Such purchases shall not be considered for the purpose of calculating quantities under Clause 14.2 (a).

## **7. Method of Delivery**

**7.1 Port of delivery:** The port of delivery shall be at APMuL's designated berth located at the West basin Port or any other designated Port nominated by the APMuL for temporarily expediting the Shipments, available for unloading. Further, in case APMuL wishes to designate any other port, it shall be informed to Supplier well in advance, so that the Supplier is informed about the discharge port. Any additional cost on account of Coal transportation to the Delivery Point, in case of port other than Mundra Port shall be reimbursed to the Supplier by APMuL, on producing documentary evidence.

**7.2 Delivery Point:** The point of delivery for Coal shall be up to the Delivery Point of APMuL.

**7.3 Demurrage:** No demurrage cost at Load Port and Discharge Port shall be borne by the Buyer whatsoever.

**7.4 Supplier's Warranty:** Supplier warrants that, at the time of delivery of each cargo, it shall have good title to all such Coal to be delivered to Buyer, the right to sell the same, and that such Coal is free from all liens, claims and encumbrances.

**7.5** The Supplier shall deliver the Coal as per the delivery schedule advised by the Buyer without any extra cost. Buyer shall not be responsible for any damages/shortages or loss of material during transportation/ transit of the Coal.

## **8. Title and Risk**

Coal to be sold by Supplier and purchased by the Buyer pursuant to this contract shall be delivered by the Supplier to Buyer at the Delivery Point. Title and risk to Coal aboard each Vessel carrying such Coal shall pass from Supplier to Buyer at the West Basin Port of Adani Port and Special Economic Zone Limited (APSEZ) (hereafter referred as "Discharge Port").

## **9. Quality and Quantity**

**9.1 General Quality Provisions:** Supplier shall cause the mining and/ or loading of the coal to be conducted so that all coal loaded into ships at the Port shall be substantially free from impurities and extraneous materials related to the mining and processing of coal, including bone, slate, earth, rock, pyrite or wood. Supplier represents and warrants that the quality of each Shipment of coal hereunder shall satisfy each quality parameter set forth in Exhibit A.

**9.2 Rejection of Coal:** In cases where values of coal quality parameters obtained by Independent Inspection Agency exceeds the rejection levels as set forth in Exhibit A for the each Shipment of coal delivered by the Supplier, for receipt and consumption of off-specification (exceed Rejection) coal at the APMuL thermal power station (TPS), only cost of coal as USD 1 per MT shall be reimbursed. However, the liabilities, such as demurrage charges, supervision charges, penalties etc. for supply of the off-spec coal shall at the cost of the Supplier.

For avoidance of any doubt, such Coal will not form part of annual coal quantity supplied to the Buyer. The Supplier shall make up for such shortfall quantity in the subsequent shipment to the Buyer.

In case where values of coal quality parameters obtained by Independent Inspection Agency exceeds the rejection levels as set forth in Exhibit A basis Load Port analysis result itself, for each Shipment of coal, such Shipment shall be deemed to be rejected at that point itself, and no payment whatsoever shall be made by Buyer to Supplier. For avoidance of any doubt, such Shipment shall not be accepted by Buyer and the quantity of Coal shall not be considered as part of annual Coal quantity for the purpose of this Agreement.

## **9.3 Quantity of Coal**

The final quantity received by the Buyer from the Supplier, for the purpose of this Agreement of Coal supply and payments, shall be basis the draft survey analysis conducted at Discharge Port by APMuL.



## **10. Price and Adjustment / Penalty of the price for Quality**

**Base CIF:** The Base CIF Price for the coal supplied with the quality as defined in specification in Exhibit A and delivered by Supplier to the Delivery Point shall be the sum of FOB Price & Freight and Insurance Price & Other Charges per Metric Tonne shall be as defined and as per basis provided in Exhibit B for each Shipment and further in accordance with the requirements of the Discharge Port.

## **11. Billing and Payment**

The payment shall be released to the account of Supplier in two stages i.e. Initial Payment and Final Payment.

Payments shall be made in US Dollars for FOB Coal Price, Ocean Freight, Marine Insurance and Other Charges as per Exhibit B.

### **Initial Payment:**

90% of CIF Coal Price of consignment shall be released (as advance to be adjusted subsequently at the time of Final Payment) after 15 days of vessel arrival at Discharge port on the basis of the price adjustment for quantity and quality parameters of coal as specified in Clause 10, on fulfillment of the following conditions:

- Submission of Proforma Invoice in quadruplicate along with related coal price indices.
- Fax/photocopy of shipping documents which shall include
  - i. Bill of Lading
  - ii. Certificate of Country of Origin
  - iii. Insurance certificate for the cargo
  - iv. Load Port Analysis certificate of IIA
  - v. Certificate of quantity
  - vi. Submission of certificate indicating the Mine (s) from which the coal has been sourced [the name of mine (s) shall be from the list of mine (s) as declared by the contractor in their bid].

\*[In case importing coal from ASEAN Countries, ASEAN India Free Trade Area Preferential Tariff Certificate of Origin (Form A1) shall be submitted]

### **Final Payment:**

Balance Payment (including taxes applicable) shall be released within 15 days after receipt of quality results at Delivery Point and after taking adjustment due to variation of quality of coal as per Clause 10 on fulfillment of following documents.

1. Final invoice for coal supplied as per Exhibit B. (including taxes as applicable)
2. Certificate of sampling and analysis for quantity and quality issued by Independent Inspection Agency for coal delivered at the Delivery Point duly certified by Buyer.

Balance payment shall be made within 15 days from the date of submission of such Final Invoices.

**11.1 Bank Guarantee:** Contract Performance Guarantee ("CPG") for full quantity of Type 1 and Type 2 Coal shall be INR 50,00,00,000 (Indian Rupees Fifty Crores only). The successful Bidder(s) shall submit value pro-rated for such amount of CPG, for quantity agreed under this Agreement, correct to the nearest integer number, in the form of bank guarantee issued or confirmed by a Scheduled Bank in India, in favour of Adani Power (Mundra) Limited, in the format enclosed in Exhibit C of this Agreement, with a validity of 01 (one) year. The Bank Guarantee will be renewed every year one month prior to the last date of the last month of the Agreement Year.

**Records of Supplier:** Supplier shall maintain complete and accurate records to support all invoices submitted pursuant to Section 11 hereof. APMuL shall have the right, upon reasonable prior notice, to inspect and review at Supplier's offices any such records at any reasonable time for the purpose of verifying the correctness of any invoice submitted by Supplier to APMuL, any calculation of premiums and penalties for variations in quality.

## ***12. Coal Sampling and Analysis Procedures***

### **12.1.1 Sampling & Analysis :**

#### **During loading of coal in vessel at Load port**

- a) Collection and Sampling of Coal shall be done by internationally accepted methodologies.
- b) Quality Inspection, Analysis and assessment of Coal Parameters shall be carried out by an IIA (Independent Inspection Agency) appointed by Supplier with prior approval of APMuL as per ISO Method, and shall be basis for Billing and Payments.

#### **During discharging/unloading of coal from vessel at Discharge port after Coal is discharge in Buyer's country**

- a) Collection and Sampling of Coal shall be done at Discharge Port. Normally, sampling would be done through mechanical sampling system installed. In case of exigencies suitable alternative option will be resorted to.
- b) Quality Inspection, Analysis and assessment of Coal Parameters shall be carried out by an IIA (Independent Inspection Agency) appointed by Buyer as per ISO Method.

- c) For the purpose of sampling and analysis of Coal, composite sample shall be made in 4 parts. 1st part shall be analyzed by IIA appointed by APMuL and 2nd part shall be kept as referee sample for 1 month, 3rd part shall be Buyer's sample and 4th part shall be Supplier's sample.

#### **12.1.2 Disagreement on test results at Delivery Point**

Parties may call for the test of the Referee Sample, in case they object to Designated IIA Analysis Report and may request the Independent Inspection Agency/Laboratory, with prior written approval and agreement of either Party, to promptly analyze the Referee Sample and to promptly deliver the results thereof to the Parties.

This referee sample analysis result will be final and binding for payment purpose. All costs, expenses and fees associated with the testing of the Referee Sample shall be for the account of the Party who is challenging the results of the analysis.

The Buyer/ Supplier shall cause the Independent Laboratory to deposit the Referee Sample in a sealed container and to maintain custody thereof for a period of not less than 1 month. Each Referee Sample shall not be less than five (5) kilograms.

#### **12.1.3 Method of Sampling.**

The representative samples of the Coal shall be taken by authorized Independent Laboratory from continuously moving stream by automatic mechanical sampling machines all in accordance with the ISO standards, as amended from time to time. Wherever automatic sampling is not available manual sampling will be allowed to be resorted to only in exceptional cases.

#### **12.1.4 Procedure for analysis**

- a. The testing / analysis of coal samples shall be carried out by the authorized Independent Laboratory strictly as per the applicable standards and procedures listed in the Agreement for the parameters listed in General Specification of Coal.
- b. The test for Gross Calorific Value (as received) shall be carried out as per latest edition of ISO as amended from time to time. The Gross Calorific Value (as received) shall be calculated as accurately as possible as per ISO. The Gross Calorific Value shall be calculated as per ISO standard as amended from time to time, for the purpose of computing Invoice price as per the provisions of the Agreement.

#### **12.1.5 Non conformance**

If the results of analysis of Coal for any Shipment of Coal shows that one or more of the parameters of Coal listed in General Specification, is outside the acceptable rejection limits (without any tolerance on acceptable range Specified) contained in General Specification of Coal and / or the Coal contains non-coal contamination, APMuL shall consider such Coal as Non-

Conforming Coal and shall be dealt with in accordance with the provisions of this Agreement, including provisions of the Section 9.

#### **12.1.6 Witnessing of sampling and analysis**

The authorized representative of the Parties shall have the right to observe the sampling and analysis. In the event the authorized representative(s) of the Parties are not present during the sampling and analysis, the authorized Independent Laboratory shall continue drawing the representative samples of Coal as per Section 12 and analyzing the samples as per Section 12 and the non-presence of any of the authorized representatives of the Parties shall not affect the validity of such sampling and analysis.

#### **12.1.7 Independent Laboratory**

Not later than 10 days prior to the Commencement Date as per this Agreement, the Supplier shall, at its cost and expense, appoint the Independent Laboratory to conduct analysis of Coal to be supplied to the Buyer after due approval from APMuL, at the Loading Point.

- a. The Supplier shall appoint such Independent Laboratory at Loading Point for measuring the quality as defined in Clause 12.1.1 after APMuL's review and approval.
- b. On receipt of all details, the APMuL shall consider such proposal of the Supplier and convey his approval or otherwise in writing to the Supplier of receipt of the Supplier's complete proposal.
- c. The approved Independent Laboratory shall be appointed by the Supplier for a period, as may be agreed between the Parties, with a provision to terminate their services in case of deficiency in performance determined in accordance to (d) below
- d. The performance of such Independent Laboratory shall be reviewed by the Supplier & APMuL from time to time. Any adverse feedback and / or deficiency / delay in service, by such Independent Laboratory, shall be discussed with the Supplier and with the Independent Laboratory for corrective actions. In case the corrective actions taken / proposed to be taken are not satisfactory and / or the deficiency / delay in service or the adverse feedback continues, the services of Independent Laboratory shall be terminated on the advice of the APMuL.
- e. Appointment of any other Independent Laboratory other than those previously approved shall be subject to APMuL's prior approval as per provisions contained in (a) and (b) above.

### **13. Force Majeure**

#### **13.1 Definition of Force Majeure**

Any act, event or circumstance or combination of act, events or circumstances:

1. which is not within the reasonable control of the Affected Party;
2. which would not have been avoided by reasonable care and diligence of the Affected Party; or
3. which is not attributable to any breach or negligence of the Affected Party, and as a direct result of which the Affected Party is prevented or delayed in performing any of its obligations under this Agreement, and which may include, without limitation, events such as the following, provided the above conditions are satisfied in respect of both Parties:
  - i. war (whether declared or undeclared), acts of terrorism, sabotage, blockage, revolution, riot, insurrection, mobilization, civil commotion or acts of public enemies; in respect of the Supplier and Buyer;
  - ii. extreme weather events, storms or cyclones, wind and waves arising from a cyclone, action of the elements, epidemics, severe tropical storms, landslides, earthquakes, floods, bridge failure or road or rail closure due to washouts, impassability or natural disaster;
  - iii. strikes, lockouts, stoppages or other forms of industrial action;
  - iv. accidents (including accidental emissions of pollutants or hazardous substances), fire, explosion (including due to spontaneous combustion), radioactive contamination and toxic or dangerous chemical contamination;
  - v. failure (other than a failure due to an act or omission of the Supplier) to obtain or renew (including renewal with less favourable conditions than the existing approvals) any Authorization;
  - vi. unavailability or major breakdown or any reduction in capacity of major equipment forming part of the Project including major coal preparation facilities or coal conveyor system;
  - vii. action or inaction of any government or Government Agencies or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, order, prohibition, intervention, requisition, requirement, direction, embargo or regulation or control on imports, exports or foreign exchange;
  - viii. Any change in law/ regulations in country of origin on account of discontinuing of coal export from the country;
4. But does not include with respect to both Parties:
  - i. financial hardship or inability of a Party or a Related Entity to make a profit or achieve a satisfactory rate of return from sale or consumption of Coal;

- ii. a change in market conditions or market prices, including loss of market share, loss of profit, loss of customers, loss of market share or reduction in the demand for Coal;
- iii. failure or inability to perform attributable to the market or sale price for Coal or currency availability or devaluation;
- iv. the inability of a Party to obtain financing, or financing on commercially acceptable terms, for the performance of any of its obligations under this Agreement.

### **13.2 Effects of Force Majeure**

- i. Except as provided in Section 13.3, either party shall be excused from performance and shall not be construed to be in default in respect of any obligation there under for so long as the failure to perform such obligation shall be due to an event of Force Majeure.
- ii. If an event of Force majeure shall have occurred, the Parties shall consult with one another as soon as practicable concerning the effect of such event of Force Majeure.
- iii. In respect of any Force Majeure event/events affecting the Supplier or the Buyer there is no payment obligations on either Party for the supply during such period of Force Majeure.

### **13.3 Notice of Force Majeure : Procedure**

- a) As soon as possible following the date of commencement of any event of Force Majeure, if either Party desires to invoke such event of Force Majeure, (subject to Section 13.2) as a cause for delay in the performance of any obligation hereunder, it shall advise the other Party in writing of such date and the nature and expected duration of such event of Force Majeure. As soon as possible and in any event within twenty four hours following the termination of such event of Force Majeure, the Party having invoked such event of Force Majeure as a cause for such delay shall submit to the other party reasonable proof of the nature of such delay and its effect upon the time of performance.
- b) The Parties shall
  - use their best efforts to remove or terminate as soon as practicable any event of Force majeure, including, without limitation, by recourse to mutually acceptable (which acceptance shall not be unreasonably withheld by either party) alternate sources of services or equipment in order to perform obligation as per scope of this Agreement;
  - use their best efforts to prevent and reduce to a minimum and mitigate the effect or any delay occasioned by any event of Force majeure including by recourse to alternate sources of services or equipment in order to perform obligation as per scope of this Agreement; and

- use their best efforts to ensure resumption of normal performance of this Agreement after the termination of any event of Force majeure and shall perform their obligation to the maximum extent practicable as agreed between the Parties.

## **14. Defaults and Remedies**

### **14.1 Events of Default**

An event of default ("Default") under this Agreement shall be deemed to exist upon the occurrence of any one or more of the following events:

- a) Failure by either party to make payment of any amount due to the other party under this Agreement, which failure continues for a period of sixty (60) days after receipt of written notice of such nonpayment (unless Payment of such amount is contested or otherwise disputed in accordance with the provisions of this Agreement);
- b) Failure by Supplier to deliver to APMuL during any month quantity of coal ordered within delivery schedule of the dates specified in the Order(s) for such Coal, unless excused by Force Majeure. A Default shall be deemed to have occurred if, after a Notice of Default, Supplier has failed to deliver such coal within ten days and has failed to provide adequate assurances to APMuL within such cure period that such failure will not be repeated.
- c) Failure by Supplier to meet Orders from APMuL for the monthly Coal quantity to be supplied in any one month, unless excused by Force Majeure.
- d) Discontinuance of supply of coal and not giving any assurance when coal supplies will be resumed.
- e) Failure by Supplier to provide adequate assurances as required in connection with any provision of this Agreement within 15 [fifteen] days after notice of such failure.
- f) Failure of either party to perform any other covenant, agreement or undertaking provided for in this Agreement or breach of any representation or warranty of either party which has a material adverse effect on the other party, and (i) such failure or breach continues for 15 [fifteen] days after notice of such failure or breach or (ii) if the nonperforming party shall commence within such 15 [fifteen] days and shall thereafter proceed with all due diligence to cure such failure or breach, such failure or breach is not cured within such longer period (not to exceed 30 [thirty] days) as shall be necessary for such party to cure the same with all due diligence.
- g) An assignment of this Agreement that is not permitted or consented to pursuant to Section 18.1.
- h) The bankruptcy or insolvency of either party.

### **14.2 Remedies for Default**

**a. Remedy for Buyer's event of Default**

Without prejudice to the other rights and remedies available to the Supplier under law and this Agreement, if the Buyer, for any reason, whatsoever, fails to take delivery of the complete Annual Tonnage or any part thereof, the Supplier shall be entitled to claim from the Buyer all the losses, damages, costs, expenses, liabilities etc. suffered by it as a consequence of or arising out of such failure of the Buyer upon submission of reasonable proof/evidence of same. In the event of such claim being raised by the Supplier, the Buyer shall pay the same to the Supplier within thirty (30) days of receipt of the claim.

**b. Remedy for Supplier's event of Default**

If the Supplier fails to deliver the complete Annual Tonnage or monthly quantity, as provided in Clause 6, or any part thereof in any Agreement Year, the Parties shall discuss and attempt to agree on reasonable arrangements and appropriate compensation to Buyer in respect thereof, for the generation loss due to non-availability of Coal. However, this arrangement would be without prejudice to rights of Buyer to claim its other losses from the Supplier which may arise out of Supplier's event of default.

**14.3 Waiver of Default**

Either party may waive a Default by the other party, provided that no such waiver shall be binding unless reduced to writing, and any such waiver shall be deemed to extend only to the particular occurrence of Default waived and shall not limit or otherwise affect any rights that either party may have with respect to any prior or subsequent Default.

**14.4 Cumulative Remedies**

None of the remedies provided in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to either party at law or in equity.

**14.5 No Consequential Damages**

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for consequential damages by virtue of its breach of any of its obligations, representations or warranties hereunder.

**15. Representations, Warranties and Covenants**

**15.1 Supplier's Representations and Warranties**

In addition to the representations and warranties set forth elsewhere in this Agreement, Supplier hereby represents and warrants to APMuL as follows:

- a) Supplier is a company duly organized and in good standing under the laws of the Republic of [ \_ \_ \_ ] and has been duly authorized by all requisite corporation action to execute and deliver this Agreement.



Supplier further represents that it is not involved in any litigation with any party that would jeopardize or impair Supplier's ability to perform this Agreement.

- b) The person executing and delivering this Agreement on Supplier's behalf is acting pursuant to proper authorization, and this Agreement is the valid and binding obligation of Supplier and is enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).
- c) Neither the execution and delivery by Supplier of this Agreement nor the consummation by Supplier of the transactions contemplated hereby is an event which, of itself or with the giving of notice or the passage of time or both, constitutes a violation of or will conflict with or result in any material breach of or any default under the terms, conditions or provisions of any judgment, law, rule or regulation to which Supplier is subject, or of Supplier's organizational documents, or of any agreement or instrument to which Supplier is a party or by which it is bound.

## **15.2 Representation and Warranties of APMuL**

In addition to the representations and warranties set forth elsewhere in this Agreement, APMuL hereby represents and warrants to Supplier as follows:

- a) APMuL is a limited Liability Company registered under the Companies Act 1956 of India, validly existing and in good standing under the laws of Republic of India with full power and authority to enter into this Agreement. APMuL further represents that it is not involved in any litigation with any party which would jeopardize or impair its ability to perform this Agreement.
- b) The persons executing and delivering this Agreement on APMuL's behalf are acting pursuant to proper authorization and this Agreement is the valid and binding obligation of APMuL and is enforceable in accordance with its terms.
- c) Neither the execution and delivery by APMuL of this Agreement nor the consummation by APMuL of the transactions contemplated hereby is an event which, of itself or with the giving of notice or the passage of time or both, constitutes a violation of or will conflict with or result in any material breach of or any default under the terms, conditions or provisions of any judgment, law, rule or regulation to which APMuL is subject, or of APMuL's organizational documents, or of any agreement or instrument to which APMuL is a party or by which it is bound.

## **15.3 Special Covenants of Supplier**

In addition to all other covenants of Supplier made herein, Supplier hereby covenants and agrees as follows:

- a) Supplier covenants and agrees with APMuL that all coal sold by Supplier pursuant to this Agreement will be delivered by Supplier free from all liens (except carriers' liens) and adverse claims.
- b) Supplier will own, lease or control sufficient quantities of specified coal to meet the delivery requirements of this Agreement over the specified Term.

#### **15.4 Special Covenants of APMuL**

In addition to all other covenants of APMuL made herein, APMuL hereby covenants and agrees as follows:

- a) APMuL will pay Supplier for coal delivered and accepted and no longer subject to dispute, before payment by APMuL on senior debt.
- b) APMuL shall obtain and have in effect all Permits necessary for the delivery, off-loading and utilization of coal.

### ***16. Indemnification***

#### **16.1 Supplier Indemnity**

Supplier agrees to defend, indemnify and hold harmless APMuL, its partners and Affiliates and all officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims, damages, losses, fines, penalties and assessments by any public agency, costs and expenses (including costs and expenses of defense, settlement and reasonable attorneys' fees), which are incurred or brought as a result of any negligent or willful act or omission of Supplier, its agents, employees, representatives, contractors or subcontractors associated with, or arising from, the performance by Supplier of its obligations under this Agreement, including such matters arising in connection with the docking, unloading or undocking of the vessel.

#### **16.2 APMuL Indemnity**

APMuL agrees to defend, indemnify and hold harmless Supplier and its Affiliates and all officers, directors, employees and agents thereof, from and against any and all liabilities (including third party liabilities), lawsuits, claims, damages, losses, property damage, fines, penalties and assessments by any public agency, costs and expenses (including costs and expenses of defense, settlement and reasonable attorneys' fees), which are incurred or brought as a result of any negligent or willful act or omission of APMuL, its agents, employees, representatives, contractors or subcontractors associated with, or arising from, the performance by APMuL of its obligations under this Agreement, including such matters arising in connection with the docking, unloading or undocking of the vessel.

#### **16.3 Indemnity for Warranties and Other Matters**

With respect to or arising out of any breach by a party of its warranties, representations or covenants hereunder, such party shall indemnify and hold the other party and its successors, assigns, partners, employees, contractors, subcontractors and agents harmless from and against all damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, penalties, causes of action, proceedings, judgments, administrative and judicial orders and liabilities (including costs of defense, settlement and reasonable attorneys' fees) assessed, incurred or sustained by or against such other party and its successors, assigns, partners, employees, contractors, subcontractors and agents.

#### **16.4 Effect of Indemnification**

The indemnification provided for in this Section 16 shall not provide an alternative remedy for any deficiencies in the quality of coal delivered hereunder or for any liabilities, damage or losses which are expressly addressed in any other Section of this Agreement; the remedies expressly provided for in such other Section of this Agreement shall, to the extent applicable, govern the rights and obligations of the parties instead of the remedies provided for in this Section 16.

#### **16.5 Notice and Legal Defense**

Promptly upon receipt by a party entitled to indemnification under this Section 16 (the "Indemnified Party") of any claim as to which such indemnification may be applicable ("Claim"), the Indemnified Party shall notify the other party (the "Indemnifying Party") of such fact in writing with the details of such Claim. The Indemnifying Party shall assume the defense thereof with counsel of its choice, subject to the reasonable approval of the Indemnified Party. If the parties against whom the Claim is asserted include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from, additional to or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such Claim on behalf of such Indemnified Party, at the Indemnifying Party's expense. The Indemnified Party shall retain authority, in the reasonable exercise of its discretion, to approve any and all communications with, and to prevent the submission of any documents to, any court or governmental authority having jurisdiction over the Claim.

#### **16.6 Failure to Defend Claim**

Should the Indemnified Party be entitled to indemnification under this Section 16 as a result of a Claim by a third party, and should the Indemnifying Party fail to assume the defense of such Claim, having received notice as required by Section 16.5, the Indemnified Party may at the expense of the Indemnifying Party contest (or, with the prior written consent of such Indemnifying Party, not to be unreasonably withheld, settle) such Claim; provided, that no such contest need be made, and settlement or full payment of any such Claim may be made upon seven days' prior written notice to but without consent of the Indemnifying Party (with such Indemnifying Party remaining obligated to indemnify the Indemnified Party under this Section 16 if, in the written opinion of the Indemnified Party's counsel, such Claim is meritorious.

## **16.7 Joint Cause**

If any Claims for indemnity arising out of Section 16.1 or Section 16.2 are caused by joint and concurring acts or omissions of Supplier and APMuL, the liability of Supplier and APMuL therefore shall be apportioned according to their respective degrees of fault.

## **16.8 Survival**

The provisions of this Section 16 shall survive the termination, cancellation or expiration of this Agreement, subject to applicable statutes of limitation.

## **17. Notices**

Any notice required or permitted under this Agreement shall be in writing, shall be deemed to have been duly given on the date of receipt, and shall be either served personally on the party to whom notice is to be given, delivered by any recognized courier service, sent by telecopy or fax, or mailed to the party to whom notice is to be given, by first class registered or certified mail, return receipt requested, postage prepaid. Notices shall be addressed to the addressee at the address stated below, or at the most recent address specified by written notice given to the other party in the manner provided in this Section 17:

If to APMuL:

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Adani Power (Mundra) Limited  
 1st Floor,  
 South Block,  
 Adani Corporate House,  
 Shantigram, Near Vaishnodevi Circle,  
 SG Highway,  
 Ahmedabad – 382421 Gujarat, India  
 Email ID: XXXX

If to Supplier:

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## **18. Assignment**

### **18.1 Assignment**

This Agreement may be assigned by either Party to a successor to substantially all of the assets of a party hereto by way of merger, consolidation or sale of assets, or to a parent, subsidiary, associate or business affiliate or Affiliate or to any other party provided that (i) unless released by the other party, the assignor shall remain fully liable for all warranties, representations and covenants hereunder, (ii) the assignee shall assume in writing all

warranties, representations and covenants hereunder . In the event of such assignment and transfer, the supplier and the said assignee (third party) agrees to execute any deeds, documents or letters or such other things as may be required by the buyer to give effect to or recognize such assignment.

Except as provided above and in Section 18.2, any transfer, assignment, delegation, or attempted transfer, assignment or delegation under this Agreement or of any of the rights or duties herein granted or imposed, whether voluntary, by operation of law or otherwise, without consent of the other party in writing, (which consent shall not be unreasonably withheld) shall be an event of Default under this Agreement.

## **18.2 Assignment to Financing Parties**

Supplier may assign the right to payments under this Agreement as collateral to any parties which provide financing to Supplier or any parent, subsidiary or Affiliate of Supplier ("Supplier Financing Parties") and their successors and assigns upon notice to, but without further consent of APMuL. In order to facilitate the obtaining of any such financing, APMuL hereby confirms its agreement that in the event of any Default on the part of Supplier of any provision of this Agreement or the occurrence of any other event which APMuL may claim as grounds for canceling this Agreement, APMuL (having received prior written notice of the name and address of the Supplier Financing Parties) will give written notice thereof to such Supplier financing parties. APMuL shall execute such consent and agreement or similar documents with respect to such collateral assignment, as the Supplier financing parties may reasonably request. APMuL agrees to cooperate with Supplier in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Supplier financing parties which does not result in an adverse change in APMuL's rights or obligations hereunder in the good faith judgment of APMuL.

## **18.3 Successors and Assigns**

Subject to the provisions of Sections 18.1 and 18.2 hereof, this Agreement and the respective rights and obligations of the parties shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

## **19. Insurance**

- The Supplier shall arrange and pay for a marine and inland insurance cover for 110% of the value of Coal up to Delivery Point (from warehouse to warehouse – anywhere in India) for each shipment covering the risks under institute cargo clause 'C' including spontaneous combustion and the risks of war, strike, riots and civil commotion from the Load Port up to the coal stockyard anywhere in India or 90 days from the date of loading of cargo at Load Port, whichever occurs first.

- The insurance policy (ies) shall specify that claims, if any, will be submitted, admitted and paid in US Dollars. The Buyer shall be shown as the beneficiary while obtaining such insurance. The insurance policy shall allow the Buyer to make claims in India and all the claims and settlement of dues shall be the responsibility of the Supplier.
- Complete details of the relevant ocean going vessel including but not limited to agreement number, port of loading, name of vessel, quantity of material loaded on board as per the Loading Point draft survey weight, number and date of the bill of lading, date of sailing of the vessel, the name of the destination port, expected arrival date at the destination port shall be provided in the insurance policy. Supplier shall provide insurance policies to Buyer evidencing insurances actually arranged. In case such information is provided by the Supplier by fax, the Supplier shall ensure that the message is faxed in order to ensure clear receipt of the message by the Buyer.

## **20. Arbitration**

### **20.1 Arbitration**

The parties shall negotiate in good faith and attempt to resolve any dispute which may develop under this Agreement; however, if the parties are unable to resolve a dispute hereunder, either party may serve upon the other a demand that such matter be arbitrated, in which case the same shall be resolved by arbitration conducted in accordance with Arbitration and Conciliation Act 1996 and as amended from time to time. In the event of such a dispute, the parties shall endeavor to appoint one Arbitrator each and both the Arbitrators so appointed shall appoint the 3rd Arbitrator. The Arbitration shall be held in Ahmedabad. The language of the arbitration shall be English. The parties will proceed with the arbitration expeditiously and will conclude all proceedings thereunder, including any hearing, in order that a decision may be rendered within 60[sixty] days from the filing of the demand for arbitration by the initiating party. The award of the arbitrator will be final and binding on both parties and may be enforced in any court having jurisdiction of the party against which enforcement is sought. Each party shall bear its own expenses, including but not limited to counsel fees, except that all expenses of the arbitration shall be apportioned in the award of the arbitrator based upon the respective merit of the positions of the parties.

### **20.2 Survival of Provisions**

The provisions of this Section 20 shall survive the termination, cancellation or expiration of this Agreement, subject to applicable statutes of limitations.

## **21. Miscellaneous Provisions**

### **21.1 Rounding**

For purposes of all calculations pursuant to this Agreement, (i) amounts per Metric Tonne shall be rounded to the nearest one-tenth of one cent, (ii) all other amounts shall be rounded to the nearest fourth place after the decimal.

#### **21.2 Consequences of Termination**

In the event of a termination of this Agreement pursuant to Section 2.1, Section 2.2, or Section 14.2, neither party shall have any further obligation to perform hereunder, but no such termination shall excuse the payment of any amount due and owing by one party to the other hereunder prior to such termination, nor shall such termination affect the survival provisions of Section 15.4, Section 16.8 and Section 20.2.

#### **21.3 Amendments; Waiver**

This Agreement may not be amended, supplemented, or modified except by an instrument in writing signed by both of the parties hereto. Any failure by either party to enforce any provisions hereof shall not constitute a waiver by that party of its right subsequently to enforce the same or any other provision hereof.

#### **21.4 Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### **21.5 Governing Law**

This Agreement shall in all respects be governed and construed in accordance with the laws of the India including all matters of construction, validity and performance.

#### **21.6 Jurisdiction**

The Gujarat High Court shall have the exclusive jurisdiction in matters arising under this Agreement.

#### **21.7 Captions, Exhibits and the Table of Contents**

Titles or captions of Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All Exhibits attached hereto shall be considered a part hereof as though fully set forth herein.

#### **21.8 Entire Agreement**

This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. All previous and collateral agreements, representations, warranties, promises and conditions of sale are superseded

by this Agreement. Any representation, promise or condition not incorporated in this Agreement shall not be binding on either party.

## **21.9 Counterparts**

The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both the parties; and each counterpart shall be deemed an original instrument as against any party who has signed it.

## **21.10 Confidentiality**

Each party shall retain in confidence the contents of this Agreement and any information obtained as a result of negotiation and performance of this Agreement which either party identifies to the other as being proprietary or confidential in nature, except that (i) APMuL may, upon receipt of equivalent assurances of confidentiality, disclose such information to any proposed Financing Parties, equity investors, or operators of the Facility (if other than APMuL) and to consultants employed by APMuL and (ii) Supplier may, upon receipt of equivalent assurances of confidentiality, disclose such information to any parties proposing to provide financing to or acquire an equity interest in Supplier or any of its Affiliates. Further, such information may be disclosed when requested by a court or government agency, or to the extent required by state/Central statutory/regulatory agencies.

## **21.11 Attorney Fees**

The parties agree that if one party brings an action against the other with respect to this Agreement, including the resolution of disputes pursuant to arbitration under Section 20 hereof, the parties' reasonable legal fees and other related expenses will be apportioned between the parties by the arbitrator or judge based upon the respective merits of the parties' positions.

## **21.12 Right to Visit**

Each party grants to the other (including its agents) the right to visit its facilities (including Mines owned by Supplier), from time to time, upon reasonable notice and subject to the applicable rules and regulations of the facilities, in order to witness and review operations related to this Agreement.

## **21.13 Further Assurances**

The parties shall execute and deliver such additional documents and shall cause such additional action to be taken as may be reasonably necessary to carry out the purposes and intent of this Agreement.



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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed on the date hereof by their respective representatives heretofore duly authorized.

As Supplier

By:

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As APMuL

By:

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**EXHIBIT A**  
**GENERAL SPECIFICATION OF COAL**

Parameter	UOM	Type 1			Type 2		
		Range	Guaranteed Specification	Off-Specs Level/ Rejection limit	Range	Guaranteed Specification	Off-Specs Level/ Rejection limit
Gross Calorific Value (ARB)	Kcal/Kg	5100 to 5700	5400	Below 5100	4200 to 4800	4500	Below 4200
Total Moisture	% Wt	18-28	23	Above 28	24-34	29	Above 34
Ash(ARB)	% Wt	02-12	8	Above 12	02-06	4	Above 6
Sulphur (ARB)	% Wt	0.1-0.8	0.6	Above 0.8	0.1-0.5	0.3	Above 0.5
Volatile Matter (ARB)	% Wt	25-40	-	Below 20	25-40	-	Below 20
Grindability (HGI)	HGI	45-60	-	Below 40	45-60	-	Below 40
Ash Fusion Temperature (IDT) (Reducing Atmosphere)	°C	1130-1200	-	Below 1100	1130-1200	-	Below 1100
Size (0-50 MM)	%Wt	Above 75	-	Below 70	Above 75	-	Below 70
Fines (Less than 0.2 mm)	%Wt	Less than 25	-	Above 30	Less than 25	-	Above 30
Annual Coal Consumption	MMTPA	2.5			11		

**Guaranteed Specification**

PARAMETER	Type 1 Coal	Type 2 Coal
a. Gross Calorific Value (ARB)	5400 Kcal/ Kg	4500 Kcal/ Kg
b. Ash Content (ARB)	8%	4%
c. Total Moisture Content (ARB)	23%	29%
d. Sulphur Content (ARB)	0.6%	0.3%
e. Fines (Less Than 0.2 mm)	Up to 50mm with fines (up to 2mm) less than 20%	Up to 50mm with fines (up to 2mm) less than 20%

**EXHIBIT B****PRICE (Applicable Agreement Price)****1. Applicable Agreement Price**

S N	Particulars	Price	UOM
A	FOB		\$/Mt
B	Ocean Freight & Marine Insurance		\$/Mt
C	Other Charges (to be quoted in % of (A + B))		%
D	CIF	$A+B+[C\% \times (A+B)]$	\$/Mt

**NOTE:**

- i. FOB, Ocean Freight & Marine Insurance are variable as per Clause No. 3 below of this Exhibit.
  - ii. Other Charges shall be sum of Sampling & Analysis charges at Load Port Custom Clearance and Freight Forwarding Agency Charges and other Incidental Charges incurred at Loading Point.
2. Agreement Price shall be the Delivery Point delivered cost of Coal, and shall deem to include all cost such as FOB Coal Price, Ocean Freight, Marine Insurance, upto the Delivery Point of APMuL, and include all applicable duties and taxes.

**3. PRICE VARIATION:****3.1.FOB Price:**

- i. The imported Steam Coal to be supplied under this tender should be of any foreign origin. Further APMuL has specified range for each parameter of both type of coal and also linked the FOB prices to "HBA published by Government of Indonesia" Price shall be decided as per below methodology in Sub-Clause (ii).

FoB Price for each shipment = final FoB price arrived basis Reverse Auction for applicable Guaranteed Specification X  $HPB_s / HPB_q$

Where,

HPB<sub>s</sub> shall be the price calculated using the below mentioned formula (Published by the ministry of energy and mineral resources of Indonesia), where applicable HBA Index shall be for the month of B/L and basis load port certificate of sampling and analysis.

HPB<sub>q</sub> shall be the price calculated using the below mentioned formula (Published by the ministry of energy and mineral resources of Indonesia) based on Guaranteed Specification and applicable HBA Index for the month of bid submission date.

**HPB Formulae for Coal having GCV more than 4300 kCal/kg**

$$\text{HPB} = (\text{HBA} * \text{K} * \text{A}) - (\text{B} + \text{U})$$

Where (all parameters basis analysis at Loading Point)

$$\text{K} = \text{GCV (ARB)} / 6322$$

$$\text{A} = (100 - \text{Total Moisture}) / (100 - 8)$$

$$\text{B} = (\text{Sulfur (ARB)} - 0.8) * 4$$

$$\text{U} = (\text{Ash (ARB)} - 15) * 0.4$$

**HPB Formulae for Coal having GCV less than 4300 kCal/kg**

$$\text{HPB} = (\text{HBA} * \text{K} * \text{A}) - (\text{B} + \text{U})$$

Where (all parameters basis analysis at Loading Point)

$$\text{K} = \text{GCV (ARB)} / 6322$$

$$\text{A} = (100 - \text{Total Moisture}) / (100 - 8 / \text{FKA (i)})$$

$$\text{FKA} = (((((100-8) / (100 - \text{Total Moisture})) * \text{Total Moisture})) + (100 - 8)) / 100$$

$$\text{B} = (\text{Sulfur (ARB)} - 0.8) * 4$$

$$\text{U} = (\text{Ash (ARB)} - 15) * 0.4$$

- ii. In case where Delivery Point GCV (ARB) is beyond inter-lab tolerance (72 kCal/kg) of Loading Point than below mentioned formula shall be used for deriving GCV (ARB):

$$\text{GCV (ARB)} = \text{GCV (ARB) at Discharge Point} + 72 \text{ kCal/kg}$$

- iii. In case where Delivery Point GCV (ARB) being higher than Loading Point GCV (ARB) no premium shall be applicable.

- iv. If the HBA for the month of B/L is not available then Purchaser shall pay in full a provisional invoice calculated by using latest available HBA Indices. Such provisional HPB is to be calculated using the latest available HBA Indices, with any balance discrepancy between the provisional invoice and the final invoice being dealt with once the HBA for the month of B/L is available.
- v. It shall be noted that in case there is a change in price indexing methodology for HBA/ published by the Indonesian ministry, the same shall be adopted for the purpose of payments and related terms of this Agreement, on mutually agreed basis by the Parties. It shall be noted that the base HPB price (HPB<sub>q</sub>) shall be revised, in such an event, calculated basis revised/ price indexing methodology.

### 3.2. Ocean Freight & Marine Insurance:

65% of quoted Ocean freight and Marine Insurance shall be Fixed for the entire duration of contract while balance 35% of the quoted Ocean freight & Marine Insurance shall be adjusted as per CERC escalation rate as per below formula. If CERC escalation rate is not available at the time of billing the difference for the same shall be adjusted in subsequent invoices on availability.

Adjusted Ocean Freight & Marine Insurance (35% of component) = Applicable Adjusted Ocean Freight & Marine Insurance for the previous month x notified CERC escalation rate for transportation of imported coal for the month of Bill of Lading

- 3.3. Any changes in royalties, taxes, permits, licenses and customs duties and charges in the country of Origin, causing economic hardship to the Supplier, shall be authenticated and reimbursed by the Buyer.
- 3.4. Price of coal shall be payable to the supplier based on methodology mentioned in this Exhibit B.

## EXHIBIT C

### PROFORMA OF BANK GUARANTEE FOR SUPPLY OF COAL

In consideration of Adani Power (Mundra) Limited having its registered office at Adani House, Near Mithakhali Six Roads, Navarangpura, Ahmedabad, Gujarat, India (hereinafter called 'Buyer' which expression shall unless repugnant to the subject or context includes its successors and permitted assigns) having agreed to exempt ( \_ \_ \_ \_ \_ ) (hereinafter called the said Supplier, which expression shall unless repugnant to the subject or context includes his successors and assigns) from the demand under the terms and conditions of Coal Supply Agreement No. \_\_\_\_\_ for ( \_ \_ \_ \_ ) hereinafter called 'Agreement' for the due fulfillment of the performance as per terms and conditions contained in the said Agreement ( \_ \_ \_ \_ ) for ( \_ \_ \_ \_ ) on production of Bank Guarantee for INR (Indian Rupees only).

1. We ( \_ \_ \_ \_ \_ ) Bank hereinafter referred to as 'the Bank' do hereby undertake to pay to the Buyer unconditionally on his mere demand an amount of not exceeding INR ( \_ \_ \_ \_ ) against any loss or damage caused to or suffered by the said Buyer by reason of any breach by the said Supplier of any of the terms and conditions contained in the said Agreement. The decision of the Buyer as to any such breach having been committed and loss suffered shall be final and binding on us.
2. We ( \_ \_ \_ \_ \_ ) Bank do hereby undertake to pay the amounts due and payable under this guarantee without any demur merely on a demand from the Buyer stating that the amount claimed is due by way of loss or damage caused to or would cause to or suffered by the Buyer by reason of any breach by the said Supplier of any of the terms or conditions contained in the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR ( \_ \_ \_ \_ )
3. We ( \_ \_ \_ \_ \_ ) Bank further agree that the guarantee herein contained shall remain in full force and effect during the period as provided in the said Agreement and/ or till all the dues to the Buyer by virtue of the said Agreement have been fully paid and its claim satisfied or discharged or till a duly authorized officer of the Buyer certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Supplier and accordingly discharges the guarantee. Unless a Demand or claim under this guarantee is made on us in writing on or before the ( \_ \_ \_ \_ ) to include 6 (six) months claim over and above the period i.e. ( \_ \_ \_ \_ ) (date) the validity of the Bank Guarantee in the Bid, we shall be discharged from all liability under this guarantee thereafter.
4. We ( \_ \_ \_ \_ \_ ) Bank, lastly undertake not to revoke this guarantee during its currency except with the prior written consent of the Buyer in writing.

IN WITNESS WHEREOF the Bank has executed these present the day and year first above written.

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Signed and delivered for and on behalf of the bank ( \_ \_ \_ \_ \_ )

Signature in the capacity of ( \_ \_ \_ \_ \_ )